

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
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5 UNITED STATES OF AMERICA,

6 Plaintiff,

7 -vs- NO: CR 09-3065

8 KEVIN POWERS,

9 Defendant.

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14 VOLUME 7

15 TRANSCRIPT OF PROCEEDINGS

16 TRIAL BY JURY

17 April 15, 2011

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22 BEFORE: HONORABLE E. RICHARD WEBBER
23 SITTING BY DESIGNATION FROM
24 THE EASTERN DISTRICT OF MISSOURI

25 Proceedings reported by stenotype.
Transcript produced by computer-aided transcription.

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1 (In open court at 8:29 a.m.)

2 THE COURT: Just doing a check. The jury
3 is ready. But I see you all are talking, and I
4 don't want to bring them in until you're ready.
5 Just let me know.

6 MR. TALLON: I would like to approach in a
7 couple minutes, Your Honor, if we could confer.

8 THE COURT: Okay, come on up.

9 (At the bench:)

10 MR. TALLON: Your Honor, I apologize for
11 getting here at 8:15. I know we had talked about
12 the possibility of doing stipulations but I'm sure
13 it would take more time than we did it before this
14 moment I'm sure we could defer that until a later
15 time. A couple of things I don't want to have slip
16 my mind. I don't know why I seize on this but I
17 know Mr. Kraehe reminded me that it was either 150
18 or 152 that we were discussing, I was discussing and
19 although there is a group that was stipulated to I
20 don't think I offered it into evidence I want to
21 cleanup that small tidbit I think it was the
22 cross-examination of Mr. Sanchez.

23 THE COURT: What number was it?

24 MR. TALLON: 150.

25 MS. HIGGINS: I have 150 listed as the

1 appraisal it's also part of Exhibit it's also part
2 of Exhibit .

3 MR. TALLON: Exhibit 150 was the appraisal
4 that I showed Mr. Sanchez yesterday it was a
5 \$1.3 million appraisal I believe it was stipulated
6 to.

7 THE COURT: 1.3 million.

8 MR. TALLON: An appraisal by Richard sin
9 no witnesses. And I believe it's stipulated to, but
10 I have not offered it into evidence Mr. Kraehe
11 reminded me I omitted to do that I'd like to do that
12 at this time.

13 MR. KRAEHE: I did cross-referenced your
14 list, Your Honor, and it wasn't actually received.

15 THE COURT: Okay it's now received.

16 MS. HIGGINS: That specific exhibit was
17 not received but it's part of Exhibits 46 and 47
18 which had been received those are the main Suntrust
19 loan files.

20 MR. TALLON: All right just to be assured.

21 THE COURT: It's in.

22 MR. TALLON: All right. And then as
23 another matter I think this is a little late but
24 still timely, the Court is aware that I was not
25 aware that I was not aware that Mr. Powers was not

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1 going to cross-examine Jodi powers. And we
2 addressed that when that issue came up yesterday
3 immediately following her direct examination. One
4 of the exhibits used in Ms. Powers direct
5 examination was Exhibit 43 it was an e-mail.

6 THE COURT: Yes.

7 MR. TALLON: A portion of it was
8 highlighted and it's a three or fourth page e-mail
9 and the balance was left for the jury to read. And
10 correct me if I'm wrong Ms. Higgins I don't have the
11 dates correct I just wasn't to put on the record
12 that initially I objected to Exhibit 43 in whole and
13 I believe it was at our hearing on February 9th,
14 2011, that Judge Armijo made a ruling and in part, I
15 think her ruling was based on the United States
16 reconsidering and withdrawing its intention to offer
17 the entire Exhibit and in fact offering to redact
18 most of it. I think on February 9th the United
19 States said we're going to offer a paragraph or
20 several sentences Ms. Higgins can clarify that for
21 me if she likes and Judge Armijo's ruling was that
22 based on the United States' representation she would
23 rule that only that portion that the United States
24 was offering would be admitted.

25 THE COURT: All right.

1 MS. HIGGINS: That would have been the
2 highlighted paragraph, Your Honor.

3 THE COURT: Well that's interesting
4 because there was a paragraph that only part of it
5 was highlight bud she read the whole paragraph.

6 MS. HIGGINS: Yes.

7 THE COURT: So are you suggesting redact
8 everything in 43 but that paragraph? Is that what
9 you're asking?

10 MR. TALLON: No, that's not it.

11 MS. HIGGINS: Yes, there were sentences in
12 that paragraph I think we wanted more than just that
13 one highlighted sentence.

14 MR. KRAEHE: We wanted the whole
15 paragraph.

16 THE COURT: She read the whole paragraph.

17 MR. TALLON: Okay. Is that what you were
18 offering on February 9th?

19 MS. HIGGINS: I can't remember I think we
20 might not have had that for sentence but we may have
21 been offering the whole paragraph.

22 MR. TALLON: Okay the record of
23 February 9th would make that clear the purpose of my
24 bringing this up, Your Honor, is that the record was
25 never, was never made of that in court well it was

1 never made of what I'm about to tell you which was
2 subsequent to February 9th, Mr. Powers instructed me
3 to withdraw his objection to the entire exhibit and
4 what he wished me to convey to Ms. Higgins was that
5 she could introduce the government could introduce
6 the entire Exhibit 43 and that that's what he wished
7 to do so I wanted to bring that up now because that
8 was a specific directive from him also in context I
9 think and this is a matter that is of record some
10 time in the near future today or Monday we're going
11 to here from a witness Christopher Sena and one of
12 the essential exhibits to the government's case, I
13 think is the transcript of his conversation with
14 Mr. Powers on January 17, 2008.

15 MR. KRAEHE: What exhibit number is that?

16 MS. HIGGINS: On the original exhibit list
17 it's the CD the tape recording is Exhibit 61, and
18 the transcript is listed as 61A.

19 THE COURT: Okay.

20 MR. TALLON: Those two exhibits are
21 involved in what I am speaking to the Court about
22 now I moved to suppress the audio and the transcript
23 in its entirety on December 8, I believe of 2010
24 Judge Armijo made a ruling in part, agreeing with
25 and most, denying my motion to suppress the entire

1 transcript but permitting or requiring that the
2 government redact some small portions of it. The
3 government also wished to redact probably about half
4 the pages of the transcript that was its own desire,
5 I was when I was aware of that of what sort of the
6 final intentions of the government was and after the
7 February 9 hearing there's another hearing
8 Mr. Powers again directed me to withdrawal his
9 objection to virtually the entire transcript and to
10 maintain objections only to some very selective
11 portions. So Ms. Higgins and I between well I would
12 say late February and even early, early April,
13 eventually hammered out a an agreed and in part was
14 based on judge Armijo's ruling an agreed version of
15 a redacted transcript which included substantially
16 more material than would have been admitted in
17 response to my initial objection and in response to
18 any ruling of Judge Armijo the request to have more
19 information included was again at the direction of
20 Mr. Powers I just want to make that clear for the
21 record since we're discussing matters in which my
22 client has exercised some control over. And some
23 cases went against my judgment.

24 THE COURT: Okay, very well.

25 MR. TALLON: I don't know if that's

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1 appropriate, Your Honor. But that's about all I can
2 say at this time.

3 THE COURT: No you are on the record and
4 anything that's appropriate you think is in evidence
5 so.

6 MR. TALLON: I think there's one other
7 matter that I will bring up at this time witness
8 Natalie Martinez is on the government's exhibit list
9 she is not on the defense witness list and in my
10 defense witness list I have a catch all provision I
11 say in addition to these witnesses I'll reserve the
12 right to call any witness identified by the
13 government I did not request process for or subpoena
14 for Natalie Martinez but I would say that after
15 yesterday's proceedings had concluded a decision was
16 made to call Ms. Martinez at about 5:00 this morning
17 I filed an ex parte motion requesting free process
18 be issued for Natalie Martinez I don't know how that
19 might be brought to your attention it was filed
20 through Judge Armijo's it was filed in her case and
21 a proposed order was sent to her mailbox so I would
22 I don't know how the mechanics would work and the
23 reason I bring it up is in part because of the
24 mechanics and the timing was short in the Court
25 grants that motion and I'll have process issued I

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1 will be attempting to serve Ms. Martinez over the
2 weekend so that she may be at least on deck and
3 available for Monday or Tuesday depending on how
4 timing goes.

5 THE COURT: Natalie please check with
6 Katie and see there should be an ex parte order for
7 the issuance of a subpoena for Natalie Martinez and
8 I'll intend to grant that and would you have her
9 check it as soon as possible so that process can be
10 issued.

11 MR. TALLON: I don't know if I'm
12 forgetting anything, Your Honor, but I know about
13 the Court's concern for time and moving matters
14 along not allowing any gaps I'm in deferring in
15 every way I can to make sure that no gap appears and
16 I would I wish the Court to know that if
17 cross-examination lags or something that occurs I'm
18 not doing it for the purpose of delay and I'm
19 attempting to do the best I can to assimilate the
20 information that I think is necessary for effective
21 cross.

22 THE COURT: I have not for a moment to
23 assume that in this case.

24 MR. TALLON: Thank you, Your Honor.
25 (In open court:)

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3 THE COURT: Please be seated.

4 In this case, the attorneys have been very
5 helpful in taking up matters in recesses and so
6 forth. This morning we had a couple of legal
7 matters that we had to take up. That's the reason
8 for the 15-minute delay. And usually, these matters
9 actually speed the trial along at some time later.
10 So please understand that there was some work going
11 on while you were waiting. Thank you.

12 Whenever you're ready, you may present
13 your next witness.

14 MS. HIGGINS: Your Honor, the United
15 States calls Joan Prouty.

16 THE COURT: Good morning. Please state
17 and spell your first name and your last name.

18 THE WITNESS: My name is Joan, J-O-A-N,
19 P-R-O-U-T-Y.

20 JOAN PROUTY,
21 having been first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. HIGGINS:

Q. And since you have kind o

25 make sure the m

25 Make sure the microphone is closer to you.

Page 12

1 Where do you live?

2 A. In Albuquerque.

3 Q. What do you do for a living?

4 A. I'm a physician's assistant.

5 Q. How long have you been doing that?

6 A. Since 1998.

7 Q. So in March 2006, you were a physician's
8 assistant?

9 A. That's right.

10 Q. Do you recall approximately what your
11 income as a PA was in March of 2006?

12 A. Roughly \$75,000 a year.

13 Q. And how did that work out to a monthly
14 income?

15 A. Roughly \$3,500 a month --

16 Q. Okay.

17 A. -- take home.

18 Q. Now in March of 2006, did you buy any
19 houses for investment purpose?

20 A. Yes.

21 Q. How many?

22 A. Three.

23 Q. Where were the houses located in
24 Albuquerque?

25 A. They were located in the Northeast Heights

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1 in a subdivision known as Oakland Estates.

2 Q. Do you recall the addresses of those three
3 houses?

4 A. Yes, I do.

5 Q. What were they?

6 A. 6600 Glenturret, 6805 Glenturret and 6701
7 Glenlochy.

8 Q. Did you have a real estate agent for these
9 purchases?

10 A. Yes, I did.

11 Q. And who was that?

12 A. Kevin Powers.

13 Q. Do you see Mr. Powers in the courtroom
14 today?

15 A. Yes, I do.

16 Q. Is he seated at counsel table behind me?

17 A. Yes.

18 Q. Now, did you have to finance these
19 purchases?

20 A. Yes.

21 Q. Who found financing for you?

22 A. Mr. Powers.

23 Q. How did you come to know Mr. Powers?

24 A. Through my boyfriend, Gene Barnett.

25 Q. And how did that happen?

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1 A. He was involved in working with a
2 colleague of his to purchase properties.

3 Q. And when you say, "he," you're talking
4 about?

5 A. Gene Barnett.

6 Q. All right. Before the three transactions
7 we're going to talk about, had you done any other
8 real estate transactions with Mr. Powers?

9 A. Yes.

10 Q. What was that about?

11 A. He had assisted in refinancing my property
12 that I lived in earlier in December of the prior
13 year, '05.

14 Q. Is that where you lived?

15 A. Yes.

16 Q. What was that address?

17 A. 8405 Racheleigh.

18 Q. So you refinanced that property?

19 A. Yes.

20 Q. Thereafter, did you meet with Mr. Powers
21 to talk about the possibility of buying homes for
22 investment purposes?

23 A. Yes.

24 Q. Where did you meet him?

25 A. At his office.

1 Q. Okay. And was there any discussion
2 between you and Mr. Powers about doing that, about
3 buying houses for investment purpose?

4 A. Yes.

5 Q. Okay. Was there any discussion about
6 buying more than one house? How was it decided --
7 you told us that you bought three homes. How was
8 that decided? And it might not have been decided at
9 the first conversation.

10 A. I don't know that it was decided at the
11 first conversation.

12 Q. All right. Was there any discussion --
13 did Mr. Powers tell you how it might be possible for
14 you to invest in buying homes in Albuquerque?

15 Did you have any money to invest?

16 A. No.

17 Q. So how could you invest in real estate if
18 you had no money to invest?

19 A. I could apply for, with his assistance
20 from the mortgage end of things, for loans that were
21 100 percent financed loans.

22 Q. All right. And then how were you going to
23 be able to make mortgage payments?

24 A. The loans that were taken out on the
25 properties included some additional moneys, and that

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1 money was to be used to pay the mortgages until they
2 could be resold.

3 Q. How were you to get that money?

4 A. That was to come at closing, and it would
5 come as money back -- as a lump sum of money back.

6 Q. To you? The money would come back to you?

7 A. Ultimately to me, yes.

8 Q. Okay. Did Mr. Powers -- now when you talk
9 about investment, did you have in mind making any
10 kind of profit?

11 A. I hoped to, yes.

12 Q. Okay. And how was that going to happen?

13 A. As I understood it, I would purchase the
14 properties. And money would come to me at the
15 closing. And I would use that money to pay for the
16 mortgages until we were able to sell the properties.
17 And the goal was that there would be -- the
18 properties would sell and there would be money left
19 over. And that would be the profit.

20 Q. Would it be accurate to say that you were
21 going to make your profit up front then?

22 A. Yes.

23 Q. And that profit up front would be the
24 money coming back to you after closing?

25 A. Correct, yes.

1 Q. Now, was there any discussion with
2 Mr. Powers about how you could ensure that there
3 would be money coming back to you? That is to say,
4 was there any difference between the original
5 listing price of the houses and the ultimate
6 purchase price?

7 A. Yes, there was.

8 Q. How did that work? That is to say, how
9 was that going to happen?

10 A. As I understand it, in the discussions
11 with the seller's Realtor, there would be an
12 agreement that the actual sales price was much
13 higher than the asking price and that the difference
14 between those two would be the money that would come
15 back to me at closing.

16 Q. All right. And who was going to negotiate
17 that part of the contract?

18 A. Mr. Powers was.

19 Q. Who found the houses?

20 A. Mr. Powers.

21 Q. Did you ever sit with him while he was
22 looking for houses for you to look at for investment
23 purposes?

24 A. Yes.

25 Q. What did he do to do that?

1 A. The properties are listed in the computer
2 under the Multiple Listing Service, MLS. And
3 looking at the properties that were available and
4 then surrounding properties, as to what they had
5 sold for in the past, and finding properties that
6 were less than what had sold in the surrounding
7 community.

8 Q. Okay. So are you saying that you were
9 looking for properties that in a particular
10 community seemed to be priced lower than what other
11 properties had been sold for in that community?

12 A. Yes.

13 Q. And was it those properties, those kinds
14 of properties, that you would look at?

15 A. Yes.

16 Q. In the three cases we're going to talk
17 about, did you happen to know the listing prices of
18 the houses you bought before the increase in the
19 sales price? You may or may not.

20 A. I don't remember exactly. I knew they
21 were less but I don't remember the exact amount
22 right now.

23 Q. Okay. I'm going to direct your attention
24 to some government exhibits. If you'll look to your
25 left, there are lots of binders, and we're going to

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1 be working first with Exhibits 4 and 5. So if you
2 will pull those two binders out, we'll look at
3 Government Exhibit 4 first.

4 The page numbers can be on the bottom of
5 the page. Now, they are tabbed, so it starts
6 with 1. And if you look through the tabs, perhaps
7 you will find a tab for 4.

8 A. I see.

9 Q. And we want to look at page 292. Now,
10 that would be the last three digits of what look
11 like page numbers on these. They may be
12 highlighted.

13 A. Is that the number at the top? And what
14 was the number again?

15 Q. 292, and you're looking for the last three
16 digits.

17 MS. HIGGINS: Your Honor, may I approach
18 the witness?

19 THE COURT: Yes.

20 Q. (By Ms. Higgins) Now, you have said that
21 Mr. Powers found the houses, and you've given us the
22 addresses. These are all in Oakland Estates, you
23 said were offers made on each of these three
24 houses?

25 A. Yes.

Page 20

1 Q. All right. And page 292 of Exhibit 4,

2 what is that?

3 A. It's a purchase agreement.

4 Q. All right. And who is the buyer?

5 A. That would be me.

6 Q. Does it show who the seller is?

7 A. It says Heights.

8 Q. Okay. And what is the contract purchase
9 price?

10 A. 490,000.

11 Q. All right. And now if you'll go to -- I
12 think it's page 300. That would be some pages back.

13 THE COURT: What is the address on this
14 one?

15 MS. HIGGINS: I'm sorry.

16 Q. (By Ms. Higgins) What is the address,
17 please?

18 A. 6600 Glenturret Way.

19 Q. Okay.

20 A. You said 300?

21 Q. I think so. We're looking for a signature
22 page. Is that the signature page for this purchase
23 agreement?

24 A. Yes.

25 Q. All right. Did you sign?

1 A. Yes, I did.

2 Q. All right. Is there a date by your
3 signature?

4 A. Yes, there is, 2/10/06.

5 Q. Who negotiated this offer?

6 A. Mr. Powers.

7 Q. Were you involved in the negotiations?

8 A. Not directly, no.

9 Q. Okay. But you were aware of what the
10 terms were?

11 A. Yes.

12 Q. And you did sign and date this?

13 A. Yes.

14 Q. Now, thereafter was this offer accepted?

15 A. Yes.

16 Q. And did you apply for a mortgage loan?

17 A. Yes, I did.

18 Q. Who was your mortgage broker?

19 A. Mr. Powers.

20 Q. Was Mr. Powers involved in any way in
21 filling out loan applications for you?

22 A. His office was, yes.

23 Q. Okay. How did you inform them about
24 things like your income and other things that needed
25 to go on the loan application? How did you tell him

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1 about that?

2 A. I brought them documents, whatever they
3 asked for. And they had prior documents from
4 December, when I had refinanced my primary property.

5 Q. Okay. And as your mortgage broker, did
6 Mr. Powers and his office submit loan applications
7 on your behalf?

8 A. Yes.

9 Q. Looking again at Government Exhibit 4,
10 page 72.

11 A. It's here.

12 Q. Okay. And what is that?

13 A. This is a loan application.

14 Q. Are you able to read, for which property?

15 A. It's kind of distorted there, but it says
16 Glenturret.

17 Q. All right. Sometimes it's helpful to look
18 at the computer screen, but maybe not.

19 A. I don't know that that helps a lot.

20 Q. But it does say Glenturret?

21 A. Yes, it does.

22 Q. Okay. Can you tell the amount, and can
23 you tell an interest rate?

24 A. The amount on here is \$392,000 at an
25 interest rate of 7.5 percent.

1 Q. All right. And does that sound like a
2 first mortgage for a property?

3 A. Yes.

4 Q. Okay. Can you see the box where you mark
5 the purpose for which you're buying the house? And
6 it's on the right-hand side.

7 A. The purpose is purchase.

8 Q. Move down just a little bit to where you
9 have three choices: Primary residence, secondary
10 residence or investment. And it will be on the top
11 right, to the middle.

12 A. I see. Thank you. Primary residence.

13 Q. All right. And I believe you said your
14 average monthly income at that time take-home was
15 what?

16 A. About \$3,500 a month.

17 Q. Okay. Looking at the second page of this
18 loan document -- not the second page, but turn over
19 until you see some information on income. What page
20 is that?

21 A. The top says 73.

22 Q. Okay. And looking at that, what was
23 submitted for you as base income?

24 A. It appears that it's \$11,163.

25 Q. Was that correct?

Page 24

1 A. No.

2 Q. Do you know anything about how -- well,
3 that simply was not your income?

4 A. That's right.

5 Q. Okay. At this point, were you still
6 living at the Racheleigh address?

7 A. That's right.

8 Q. And you intended to continue living there?

9 A. Yes.

10 Q. And were you buying 6600 Glenturret as a
11 primary residence?

12 A. No, I was not.

13 Q. And now looking at the signature page
14 where you signed your name on this loan application,
15 you'll be paging towards the back. It might be
16 three or four pages.

17 A. Yes.

18 Q. What page is that?

19 A. This page I'm looking at is 76.

20 Q. Okay. Do you see your signature on that
21 page?

22 A. Yes, I do.

23 Q. And do you see a date?

24 A. 3/20/06.

25 Q. And down in the bottom right-hand corner,

1 what mortgage brokerage company submitted this loan
2 application on your behalf?

3 A. Worldwide Mortgage.

4 Q. What was your understanding of who was
5 Worldwide Mortgage?

6 A. That was the company Kevin Powers had.

7 Q. Okay. These loan applications were
8 submitted, and did you get a loan?

9 A. Yes, I did.

10 Q. Okay. What was the plan for paying the
11 mortgage on this house? You may have mentioned it
12 before.

13 A. The plan was that at closing, I would get
14 money back. And that money would be used to pay the
15 mortgage.

16 Q. All right. Did you know at this point how
17 much money you would be getting back? And by, "at
18 this point," I mean at the time that the loan
19 applications were submitted and approved, did you
20 know how much?

21 A. It would be the difference between what
22 the original selling price was and the actual price
23 that we paid for the house.

24 Q. Okay. So at this point in the process,
25 you didn't know exactly how much?

1 A. I'd have to look again at what the
2 original price was and see. I'm sure that I did.

3 Q. Okay. Who decided how much you were going
4 to get back?

5 A. That was agreed upon between the two
6 Realtors. And the 490 price was a price that Kevin
7 had come up with, Mr. Powers had come up with.

8 Q. Okay. Would you have been able to pay the
9 mortgage on this house while owning Racheleigh as
10 well, without the money you were going to get back
11 at closing?

12 A. No.

13 Q. Did you know what the mechanism was that
14 was going to get money back to you? Did you know
15 how that was going to happen?

16 A. At one time.

17 Q. Okay. Did you go to closing on this
18 property, 6600 Glenturret?

19 A. Yes, I did.

20 Q. Did Mr. Powers come with you?

21 A. Yes.

22 Q. You might not remember, but do you recall
23 which title company?

24 A. It was US Title.

25 Q. Okay. In Exhibit 4 -- well, let me stop

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1 for just a minute. Let's look at Exhibit 5 for just
2 a minute. And that will not be in that binder I
3 think it's in the next binder. So you can leave
4 that one there and try and find space.

5 And in Exhibit 5, page 432?

6 A. Yes.

7 Q. What is that?

8 A. This is another loan application.

9 Q. For what property?

10 A. Glenturret. And again, it's pretty
11 obscured and I cannot see the exact address.

12 Q. Okay. For how much?

13 A. \$98,400 -- well, 98,000.

14 Q. And does this look like a loan application
15 for a second loan?

16 A. Yes, it does.

17 Q. Now looking at page 435?

18 A. Yes.

19 Q. Is that a signature page?

20 A. Yes.

21 Q. Now, that is your signature on that page?

22 A. Yes.

23 Q. What is the date on that?

24 A. 3/20/06.

25 Q. So for both of the loans we've been

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1 talking about, even though it's hard to read the
2 address, they were both signed on March 20th of '06?

3 A. Yes.

4 Q. Since you have Exhibit 5 out, would you
5 look, please, at 421?

6 A. Yes.

7 Q. When you went to closing, did you sign any
8 notes?

9 A. When you say "notes," you mean --

10 Q. Promissory notes.

11 A. Yes.

12 Q. Okay. So in Exhibit 5 at page 421, what
13 is that?

14 A. This is a promissory note for the second
15 mortgage.

16 Q. For how much?

17 A. \$98,000.

18 Q. At what interest rate?

19 A. 9.625 percent.

20 Q. And what property?

21 A. 6600 Glenturret Way.

22 Q. I'm now having you go back to Exhibit 4,
23 page 52.

24 A. Yes.

25 Q. What is that?

Page 29

1 A. This is another promissory note.

2 Q. Okay. In what amount?

3 A. 392,000.

4 Q. At what interest rate?

5 A. 7.5 percent.

6 Q. And for what property?

7 A. 6600 Glenturret Way.

8 Q. Okay. And on each of these notes, did you
9 sign these?

10 A. Yes, I did.

11 Q. Is it Exhibit 4 you have in front of you?

12 A. Yes.

13 Q. All right. Could you please look at
14 page 196?

15 A. (Witness complies.)

16 Q. And what is that?

17 A. This appears to be the HUD.

18 Q. Okay. And does this show for what
19 property?

20 A. 6600 Glenturret Way.

21 Q. Who is the buyer?

22 A. Well, me.

23 Q. Okay. And who is the seller?

24 A. Sarah@ Heights.

25 Q. And does it show a total contract price?

Page 30

1 It's usually at the top left somewhere or mid-left.

2 A. Yes, 490,000.

3 Q. Okay. And in the top right, there are

4 some dates. Does it show a closing date?

5 A. 3/20/06.

6 Q. In Government Exhibit 4, page 258 -- I'm

7 sorry. Let's go back to that HUD for just a moment.

8 I'm ahead of myself.

9 Does it show who the lender is on
10 Government Exhibit 4?

11 A. Yes.

12 Q. Who was the lender?

13 A. Suntrust Mortgage, Inc.

14 Q. And did you get two loans from Suntrust?

15 A. Yes, I did.

16 Q. On the second page of the HUD -- this is
17 Exhibit 4, I believe it would be page 197.

18 A. Right.

19 Q. -- down at the bottom of the page, and
20 it's usually around Line 1306, is there an item
21 having to do with K&E Construction?

22 A. 1307 there is a line, yes.

23 Q. And how much to be paid to K&E
24 Construction?

25 A. \$85,000.

1 Q. Was this the amount you were expecting to
2 get back after closing?

3 A. Yes.

4 Q. Were you intending to use K&E Construction
5 to do construction, renovation, repairs,
6 landscaping, anything like that for you?

7 A. No.

8 Q. Do you happen to remember how much you
9 actually spent on this property after closing?

10 A. I spent \$350 on a garage door opener. I
11 put window coverings in. And that was about \$700,
12 but I don't know the exact amount. And I had
13 landscaping done in the backyard.

14 Q. Okay. Can you give us an approximate
15 total?

16 A. It probably was about \$5,000 total.

17 Q. Okay. Now, looking at page 258 in
18 Exhibit 4 --

19 A. 258, you said?

20 Q. 258.

21 A. Yes.

22 Q. What is that?

23 A. It says it's an occupancy affidavit.

24 Q. Is this one of the documents that you
25 signed at closing?

Page 32

1 A. Yes.

2 Q. Did you read this document before you
3 signed it at closing?

4 A. No, I did not.

5 Q. Okay. Now after closing, did you actually
6 receive \$85,000?

7 A. I did.

8 Q. From whom?

9 A. From Kevin Powers.

10 Q. And in what form?

11 A. He gave me a cashier's check.

12 Q. All right. Just to mix things up, I'm
13 going to ask you to find Government Exhibit 156.

14 A. In 4?

15 Q. No. It's another exhibit, and it's
16 another binder. So 156.

17 A. Oh, I see what you're saying.

18 Q. And if you'll look in Government 156 on
19 page 27, and those are always the last digits.

20 MS. HIGGINS: Your Honor, this has not yet
21 been moved into evidence, but it's been stipulated
22 to. Government Exhibit 156 are bank records.

23 THE COURT: Received.

24 (Government Exhibit 156 admitted.)

25 Q. (By Ms. Higgins) And actually Ms. Prouty,

Page 33

1 whose bank records are these?

2 A. These appear, as I looked quickly, to be
3 mine.

4 Q. Now on page 27 of Government Exhibit 156,
5 what is that?

6 A. This is the cashier's check that I
7 received from Kevin Powers.

8 Q. All right. And did you deposit it into
9 this account after you received it?

10 A. Yes, I did.

11 Q. Okay. You can put that down for just a
12 minute.

13 A. Will I be coming back to this?

14 Q. You will be coming back to it, so you can
15 leave it open on the floor.

16 Now, we're going to look at another
17 property. And for this, we're going to need
18 Exhibits 96 and 95, and they may be in the same
19 binder. So if you will first open to Government 96,
20 and that would be page 534.

21 A. You said 534.

22 Q. Yes. What is that?

23 A. This is another purchase agreement.

24 Q. All right. For what address?

25 A. 6805.

1 Q. Is this another house that you bought?
2 You mentioned three. Is this -- we'll call it the
3 second one?

4 A. Yes, this is.

5 Q. Okay. And does the purchase agreement
6 show who the seller was?

7 A. Yes, it does.

8 Q. And who is that?

9 A. I'm probably butchering the name. I
10 apologize, but Mazzarella.

11 Q. Okay. And what is the offer?

12 A. \$490,000.

13 Q. And to your understanding, did this offer
14 include the amount that you were going to get back
15 after closing?

16 A. Yes.

17 Q. And looking at page 543 -- it's down a
18 bit.

19 A. Yes.

20 Q. -- is that the signature page?

21 A. Yes, it is.

22 Q. Did you sign that purchase agreement?

23 A. Yes, I did.

24 Q. And does it show who represented you?

25 A. Yes, it does. Wait a minute.

1 Q. Sometimes the real estate terms are
2 confusing. Who represented you in negotiating this
3 purchase contract?

4 A. Kevin Powers did.

5 Q. Okay. And do you also see
6 Mr. Mazzarella's name as the seller?

7 A. Yes.

8 Q. Do you see anybody who represented him?
9 You might not.

10 A. Looking at this, it would appear the
11 selling broker was Kevin Powers, even though he was
12 the buyer's broker in reality.

13 Q. Okay. And when you say "the buyer's
14 broker," are you sure he represented you?

15 A. Yes.

16 Q. Okay. So even if the real estate terms
17 don't entirely make sense to you, you know who
18 represented you in this deal?

19 A. Yes, I do.

20 Q. And who negotiated this purchase contract?

21 A. Mr. Powers did.

22 Q. Now having made this offer, did you then
23 submit loan applications?

24 A. Yes.

25 Q. Okay. And I'm going to ask you to look at

1 Exhibit 96.

2 A. Exhibit 96?

3 Q. Page 491.

4 A. Okay.

5 Q. And what does this seem to be?

6 A. It's part of the loan application.

7 Q. For what address?

8 A. 6805 Glenturret Way.

9 Q. And the loan application is for how much?

10 A. \$367,500.

11 Q. At what interest rate?

12 A. 6.910 percent.

13 Q. Now going on to the next page, does that
14 have -- well, let's stay on the first page for just
15 a minute, since it's up.

16 Which of the boxes did you mark showing
17 the purpose for which you were buying the house?

18 A. Primary residence.

19 Q. Did you mean for this to be your primary
20 residence?

21 A. No, I did not.

22 Q. Now, looking at the second page -- there
23 might not be a second page. Oh, there it is. What
24 we're looking for is income information. And I
25 believe that's at the top of the second page, which

1 would be page 492.

2 A. Yes.

3 Q. What was submitted as your income?

4 A. On this, it says \$12,000.

5 Q. And again, is that accurate?

6 A. No.

7 Q. Did this loan application list any income
8 from -- any rental income?

9 A. Apparently it does, yes.

10 Q. And what is the rental property?

11 A. I didn't have any rental property at this
12 time.

13 Q. Okay. Does it give an address of a
14 possible rental property?

15 A. I don't see any.

16 Q. Okay. But you see something in the income
17 section that speaks about rental income?

18 A. Yes, I do.

19 Q. How much was that?

20 A. It says on here \$1,200.

21 Q. But at that time, you were not renting out
22 any property?

23 A. No, I was not.

24 Q. So you had no rental income?

25 A. That's right.

1 Q. And let's go to the signature page of this
2 loan application. What page is that?

3 A. I have 493.

4 Q. Okay. And did you sign this loan
5 application?

6 A. Yes, I did.

7 Q. What is the date?

8 A. 3/23/06.

9 Q. So this sounds like it's about three days
10 later than the first property?

11 A. That's right.

12 Q. Okay. Looking at now Exhibit 95 --

13 A. Is that still this one?

14 Q. I hope so.

15 A. Yes.

16 Q. So if you'll look for the tab, going
17 back, since you're in 96, look for the tab 95, and
18 let's look at page 323.

19 A. Yes.

20 Q. And what is that?

21 A. This appears to be a loan application.

22 Q. Okay. And for what property?

23 A. For the 6805 Glenturret Way.

24 Q. And the amount?

25 A. \$122,500.

1 Q. Would this be for the second loan?

2 A. Yes.

3 Q. At what interest rate?

4 A. 9.499 percent.

5 Q. And going over to the signature page of
6 this --

7 A. Yes.

8 Q. -- what page is that?

9 A. 325.

10 Q. Did you sign that loan application?

11 A. Yes, I did.

12 Q. And what is the date on it?

13 A. 3/23/06.

14 Q. And what mortgage brokerage company
15 submitted this loan on your behalf?

16 A. Worldwide Mortgage.

17 Q. Now since you have Exhibit 95 out, let me
18 ask you: The offer was made, the loan applications
19 were submitted, and did you get financing?

20 A. Yes, I did.

21 Q. All right. Looking at -- you've got
22 Exhibit 96 out right now? I think you're at 96. If
23 you're at 95, that's fine.

24 If it's 95, would you please look at
25 page 257?

Page 40

1 A. Ninety-five, 257?

2 Q. Yes.

3 A. Here it is.

4 Q. Now, you went to closing on 6805

5 Glenturret Way?

6 A. Yes, I did.

7 Q. Do you recall which title company?

8 A. US Title.

9 Q. And was Mr. Powers with you at closing?

10 A. Yes.

11 Q. In Exhibit 95, page 257, what is that?

12 A. That's a promissory note.

13 Q. Okay. For how much?

14 A. \$122,500.

15 Q. And does it give an interest rate?

16 A. Yes, it does. 9.499 percent.

17 Q. And do you see a signature page? That's
18 usually on the second or third page.

19 A. Yes, I do.

20 Q. And you signed that?

21 A. Yes, I did.

22 Q. These promissory notes, what exactly are
23 you agreeing to in a promissory note?

24 A. To pay the amount of money that they're
25 loaning me.

Page 41

1 Q. All right. And in Exhibit 95, could you
2 please look at page 294?

3 A. Yes.

4 Q. What is that?

5 A. This is an occupancy agreement.

6 Q. All right. Does your signature show on
7 that document on that particular page?

8 A. Yes, it does.

9 Q. Okay. Did you read, review this at
10 closing?

11 A. No, I did not.

12 Q. Was it your intention to live in 6805
13 Glenturret Way as your primary residence?

14 A. No.

15 Q. And in Exhibit 95, could you go to
16 page 274?

17 A. Yes.

18 Q. We'll wait for them to get caught up with
19 us. What is that?

20 A. It's the HUD.

21 Q. Okay. Does it show you as the buyer?

22 A. Yes, it does.

23 Q. Who does it show as the seller?

24 A. I'm sorry. Seller just says Glenlochy,
25 LLC.

Page 42

1 Q. All right. And for what address?

2 A. 6805 Glenturret Way.

3 Q. And in the far right-hand corner is the
4 date. Does it have a closing date?

5 A. Yes, 3/23/06.

6 Q. Can you tell who the lender was from this
7 document?

8 A. Accredited Home Lenders, Inc.

9 Q. And again, you got two loans from
10 Accredited that you've talked about with the notes?

11 A. (No audible response.)

12 Q. You got two loans from Accredited?

13 A. Yes.

14 Q. On the second page of this document, it
15 will be 273, is there a line item down at the bottom
16 for K&E Construction?

17 A. Yes, there is.

18 Q. What line is that?

19 A. 1308.

20 Q. And the amount?

21 A. On this copy, there is not an amount.

22 Q. Okay. You did receive money back at the
23 time?

24 A. Yes, I did.

25 Q. When you went to closing, were you there

Page 43

1 with the seller? Were you both --

2 A. I wasn't in the same room with the seller,
3 no. They obviously had to close, but they weren't
4 there with me.

5 Q. That didn't happen, okay. We'll come back
6 to that.

7 On page 276 of Exhibit No. 95, is that a
8 signature page where you signed for the HUD?

9 A. Yes, it is.

10 Q. All right. Looking now at Exhibit 96,
11 page 374.

12 A. Yes.

13 Q. And what is that?

14 A. This is a promissory note.

15 Q. For how much?

16 A. \$367,500.

17 Q. So would that have been for the first
18 mortgage?

19 A. Yes.

20 Q. At what interest rate?

21 A. 6.990 percent.

22 Q. And did you sign that note?

23 A. Yes, I did.

24 Q. Okay. And also in Exhibit 96, on
25 page 430 --

Page 44

1 A. Yes.

2 Q. -- is that an occupancy affidavit form?

3 A. Yes, it is.

4 Q. Does it show your signature?

5 A. Yes, it does.

6 Q. Okay. And again, did you review this or
7 read it before signing it?

8 A. No, I didn't.

9 Q. Okay, this is like the other one. Did you
10 sign one for each of the loans?

11 A. Yes, I did.

12 Q. Now you did get money back after closing
13 in this case; is that correct?

14 A. Yes, I did.

15 Q. Drawing your attention to Exhibit 156 that
16 we left out, now we're going to look at page 35.

17 A. Which page again?

18 Q. Thirty-five.

19 A. Yes.

20 Q. What is that?

21 A. That's a cashier's check I received from
22 Mr. Powers.

23 Q. For how much?

24 A. \$75,000.

25 Q. And you received that -- how exactly did

1 you get those?

2 A. I went to his office and picked them up.

3 Q. You picked up the cashier's check that was
4 made out to you?

5 A. Uh-huh.

6 Q. Did you ever go with Mr. Powers to his
7 bank?

8 A. No, I didn't.

9 Q. All right. Looking now at the third
10 property you bought, so we can put No. 156 down for
11 just a moment. And we're going to need Exhibit 136
12 to start with, page 61.

13 A. Yes.

14 Q. And what is that? Is that the purchase
15 agreement?

16 A. It is a counteroffer to the purchase
17 agreement, yes.

18 Q. Okay. So it could be that these pages are
19 a little bit out of order. Can you find the
20 beginning of -- I think if you go forward, and it's
21 possible that we might go backwards, too -- we're
22 looking for the first page of the purchase
23 agreement. Page 63.

24 A. I see that now.

25 Q. Okay. And this is a purchase agreement

1 for what property?

2 A. 6701 Glenlochy Way.

3 Q. And is this the third of the three
4 properties you told us about?

5 A. Yes, it is.

6 Q. Okay. Are you listed as the buyer?

7 A. Yes, I am.

8 Q. Who is listed as the seller?

9 A. On this page, there is not a seller.

10 Q. But you did in fact buy it from someone?

11 A. Yes.

12 Q. Okay. Does it show a contract price?

13 A. 490,000, yes.

14 Q. Okay. Take a look at page 71.

15 A. Yes.

16 Q. Is that a signature page?

17 A. Yes, it is.

18 Q. Does it show you as the buyer?

19 A. Yes, it does.

20 Q. Is there anything on there showing a
21 seller?

22 A. Yes.

23 Q. And who is the seller?

24 A. Kevin. And I don't know this person's
25 last name, I'm sorry.

1 Q. Does it start with a B?

2 A. Yes.

3 Q. Okay. Could it be Beszelek@?

4 A. That would make sense.

5 Q. Who represented you in this transaction?

6 A. Mr. Powers did.

7 Q. And who represented Mr. Beszelek?

8 A. Premiere Realty, and that was Sarah
9 Heights.

10 Q. You had already dealt with her on another
11 one of these three transactions?

12 A. That's right.

13 Q. I think you said you didn't know the
14 original listing price. But this amount, 490,000,
15 did that include the amount that you were going to
16 get back after closing?

17 A. Yes, it did.

18 Q. All right. And who negotiated this offer
19 for you?

20 A. Mr. Powers.

21 Q. Thereafter, did you fill out loan
22 applications to get financing for this house?

23 A. Yes, I did.

24 Q. Okay. Now, you're in Exhibit 136?

25 A. Yes.

Page 48

1 Q. Take a look at page 133.

2 A. Yes.

3 Q. And what is that?

4 A. This is another loan application.

5 Q. For what address?

6 A. The 6701 Glenlochy property.

7 Q. And this loan application is for how much?

8 A. \$392,000.

9 Q. At what interest rate?

10 A. 7.750 percent.

11 Q. Is there a second page to this loan
12 application that shows income?

13 A. Yes, thand ere is.

14 Q. Okay. What income is listed for you?

15 A. \$11,000.

16 Q. All right, I'm going back to the first
17 page. Are any of those boxes checked showing the
18 purpose for which you were buying the house?

19 A. Yes, primary residence.

20 Q. All right. Were you buying this house to
21 live in?

22 A. No, I was not.

23 Q. And looking again at the second page
24 having to do with income, other than the 11,000, is
25 that the base monthly income?

Page 49

1 A. Yes.

2 Q. All right. Is there any other income
3 listed there?

4 A. Rental.

5 Q. For how much?

6 A. \$147.

7 Q. And for what rental property?

8 A. I don't know.

9 Q. Okay. You see no addresses on there that
10 that might go to?

11 A. No. No, I don't.

12 Q. But at that point, you were not renting
13 out anything; is that right?

14 A. That's correct.

15 Q. Okay. I'm going to have you -- now, this
16 is throwing you a bit of a curve -- pull out
17 Exhibit 210.

18 A. Yes.

19 Q. And I believe this is going to be on
20 pages 1 to 5, so at least it's up front.

21 A. Which pages?

22 Q. We'll start with page 1, and we'll wait
23 for them to catch up.

24 What is that?

25 A. This is a loan application.

Page 50

1 Q. For how much?

2 A. \$98,000.

3 Q. At what interest rate?

4 A. 12.125 percent.

5 Q. And would this be the second loan on
6 Glenlochy?

7 A. Yes.

8 Q. And it is for Glenlochy; I'm correct about
9 that?

10 A. That's right.

11 Q. And it shows you as the buyer?

12 A. Correct.

13 Q. And again moving down the page just a
14 little bit, this shows the purpose is?

15 A. Purchase for primary residence.

16 Q. All right. And looking at the second
17 page, does this give similar income information as
18 the first loan agreement we were just looking at?

19 A. Yes.

20 Q. Now on page 5 of this exhibit,
21 Exhibit 210, do you see -- well, it might be page 4.

22 Do you see a signature page?

23 A. Yes, I do.

24 Q. And did you sign that?

25 A. Yes, I did.

1 Q. And what is the date?

2 A. 3/27/06.

3 Q. So in terms of timing, this looks like the
4 third property, at least in terms of timing for
5 closings?

6 A. That's right.

7 Q. And was the income information on these
8 loan applications correct?

9 A. No.

10 Q. Now you've got 210 in front of you?

11 A. Yes.

12 Q. All right, let's work with that. Page 140
13 of 210, you did get the loans? They were
14 authorized?

15 A. Yes.

16 Q. Okay. And what is that?

17 A. This is a note, a promissory note.

18 Q. Okay. And this relates to 6701 Glenlochy?

19 A. Yes, that's right.

20 Q. For how much?

21 A. \$392,000.

22 Q. And the interest rate?

23 A. 7.50 percent.

24 Q. And did you sign that note?

25 A. Yes, I did.

Page 52

1 Q. All right. Does this note show who the
2 lender is?

3 A. I'm sure it does.

4 Q. Perhaps on the first page?

5 A. Cameron Financial Group d/b/a First Choice
6 Mortgage.

7 Q. All right. And since we're in
8 Exhibit 210, please look at page 122.

9 A. Yes.

10 Q. What is this?

11 A. This is the HUD.

12 Q. The settlement statement. For what
13 property?

14 A. 6701 Glenlochy.

15 Q. It shows you as the buyer?

16 A. That's right.

17 Q. And who does it show as the seller?

18 A. Kevin Mark -- did you say Beszelek?

19 Q. As best we know.

20 And what does it show as the closing date?

21 A. 3/27/06.

22 Q. And the full purchase price?

23 A. \$490,000.

24 Q. Is there a second page on this exhibit?

25 A. Yes, there is.

Page 53

1 Q. And down at the bottom of that page, so
2 that would be page 122, does that show any payment
3 to K&E?

4 A. That's actually my page 123.

5 Q. 123? Sorry.

6 A. And it does on Line 1307.

7 THE COURT: Are you still at 210?

8 MS. HIGGINS: Yes. Exhibit 210, page 123.

9 THE COURT: Okay, go ahead.

10 Q. (By Ms. Higgins) And you're at Line 1307?

11 A. That's right.

12 Q. And what does that show?

13 A. \$80,000 to K&E Construction.

14 Q. All right. I'm not sure if I asked you on
15 the second property. But both for the second and
16 the third property there have been amounts going to
17 K&E and amounts coming back to you.

18 For this property, how much of this 80,000
19 did you spend on repairs and renovations?

20 A. Roughly the same on each one, because they
21 were identical. So roughly \$5,000.

22 Q. All right. And for any of the work that
23 you had done on these properties, did you hire K&E
24 Construction?

25 A. No, I didn't.

Page 54

1 Q. Okay. Let go back to Exhibit 136 and look
2 at page 167.

3 A. What page? I'm sorry.

4 Q. 167.

5 A. Thank you.

6 Q. And is that the second promissory note you
7 signed?

8 A. Yes, it is.

9 Q. And so that was for how much?

10 A. \$98,000.

11 Q. At what interest rate?

12 A. 12.125 percent.

13 Q. Okay. And did you sign that note?

14 A. Yes, I did.

15 Q. Okay. Looking at this same Exhibit 136 on
16 page 129, what is that?

17 A. This is an occupancy agreement. They
18 title it Occupancy and Financial Status Affidavit.

19 Q. All right. And it indicates that you're
20 buying the house for what?

21 A. Principal residence.

22 Q. All right. Did you read, review this
23 before signing it?

24 A. No, unfortunately I didn't.

25 Q. Do you see your signature either on that

Page 55

1 page or the following page?

2 A. The following page, yes.

3 Q. And then also on page 178, is that the
4 other occupancy affidavit that would relate to the
5 second loan?

6 A. Yes.

7 Q. Okay. And again, it indicates you're
8 buying that as your primary residence?

9 A. Principal residence, yes.

10 Q. Okay. But you're not?

11 A. Correct.

12 Q. And then looking at Exhibit 156, page 34.

13 A. Would you repeat the page number again,
14 please?

15 Q. Yes, 34.

16 A. Thank you.

17 Q. And we're back in your bank documents?

18 A. Thank you.

19 Q. What is on that page?

20 A. That's the cashier's check I received from
21 Mr. Powers.

22 Q. In the amount of?

23 A. \$80,000.

24 Q. Okay. Now to your understanding, what was
25 K&E Construction Company?

1 A. Well, Mr. Powers told me that it was
2 something he had in the past, that he had done
3 roofing or something like that and used that
4 company.

5 Q. Okay.

6 A. So I don't know anything about K&E
7 Construction, really.

8 Q. All right. And to your knowledge, the
9 funds that were paid to K&E after closing in each of
10 these three transactions, did those funds come back
11 to you on those cashier's checks we've looked at?

12 A. Yes.

13 Q. Do you know whose idea it was to list K&E
14 on the HUD as an entity that was going to be paid
15 after closing?

16 A. No, I certainly don't.

17 Q. Was it your idea?

18 A. No, it wasn't my idea.

19 Q. And the payments to K&E, how were they
20 connected to you getting money back after closing,
21 to your understanding?

22 A. The title company would cut a check to K&E
23 Construction. And then that money would be turned
24 around into a cashier's check to be given to me.

25 Q. Who turned it around?

1 A. Mr. Powers.

2 Q. In looking at the dates of closing on
3 these three properties, they were close in time,
4 weren't they?

5 A. Very close.

6 Q. Why did you close on them close in time?

7 A. It was my understanding that they needed
8 to be closed very close in time so that --

9 MR. TALLON: Object to what her
10 understanding was.

11 THE COURT: Sustained. Could you develop
12 that?

13 MS. HIGGINS: Yes, Your Honor. I'm sorry.

14 Q. (By Ms. Higgins) First of all, why three
15 properties? Why did you buy three at once? Whose
16 idea was that?

17 A. Mr. Powers'.

18 Q. Why?

19 A. We needed to have three properties, in
20 anticipation of selling them at a later date, so we
21 had comparable values on properties in the area that
22 we could submit or the appraiser could submit for
23 any future sale.

24 Q. Okay. And so each of these three
25 properties, the purchase price shown on the purchase

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1 agreements and the total amount of the loans was how
2 much again for --

3 A. 490,000.

4 Q. For each of them?

5 A. Yes.

6 Q. And so say that again. By buying them for
7 that much and buying three at once, how was that
8 going to affect things in the future?

9 A. When you're attempting to establish the
10 price of a house, they look at surrounding areas or
11 surrounding properties in the area for what they
12 have sold for, so they have a comparative value and
13 can say that the loan is a reasonable amount.

14 And so in anticipation of when we were
15 selling these houses, we would have established that
16 price as being a reasonable comparative value.

17 Q. So in essence, you and Mr. Powers, in
18 these transactions, were setting these three houses
19 as comps for others?

20 MR. TALLON: Objection. Beyond this
21 witness' expertise.

22 THE COURT: Overruled on that basis.

23 Q. (By Ms. Higgins) In understanding what
24 Mr. Powers was telling you, were you understanding
25 him to say that you were setting comps for other

1 houses in Oakland Estates as well?

2 MR. TALLON: Objection to the form of the
3 question. Object because it's compound, and object
4 because it lacks foundation.

5 THE COURT: It's leading. Sustained.

6 Q. (By Ms. Higgins) Okay. So we've talked
7 about why you got three properties. Now, why did
8 you close on them so close in time?

9 A. So that each of the loan companies
10 wouldn't know about the prior loans or the other
11 loans that were being gotten.

12 Q. And you had three different lenders; did
13 you not?

14 A. That's right.

15 Q. How would a lender find out whether you
16 had bought other houses? Where does that
17 information show up?

18 A. In the credit report that they would pull.

19 Q. Okay. But by doing it within this short
20 time frame, there wasn't enough time for that
21 information to get into the credit report?

22 A. That's right.

23 Q. On any of these three transactions, did
24 you put any of your own money down? Were these all
25 100 percent financing?

1 A. They were 100 percent financing.

2 Q. And you received three amounts of money
3 within a short period of time. I believe you said
4 85,000, 75,000 and 80,000. If my math is correct, I
5 believe that's \$240,000.

6 What did you do with those funds?

7 A. Each of these checks was then taken to the
8 credit union and deposited and set up an account for
9 each one of the properties.

10 Q. All right. And did you make mortgage
11 payments with those as well?

12 A. Yes, I did.

13 Q. Did you do anything else with that money?

14 A. Yes, I did.

15 Q. Tell us.

16 A. Well, the first thing I did was pay back
17 my dad.

18 Q. Can you explain that, please?

19 A. In order to have money to bring to
20 closing, just for the closing costs, I needed to
21 have some money. And so I borrowed money from my
22 father. I borrowed \$30,000 from my father.

23 Q. Okay. Did you put that money in your bank
24 account?

25 A. Yes, I did.

1 Q. So that if any of the lenders asked for
2 verification of money you had in your bank accounts,
3 would that have shown?

4 A. Yes.

5 Q. Do you recall writing any kind of a letter
6 to be shown to a lender, if necessary, about that
7 30,000 deposit into your bank account?

8 A. I did not write a letter, no.

9 Q. Okay. Do you recall seeing any letter
10 having to do with that?

11 A. Yes, I do.

12 Q. Did you sign that letter?

13 A. I did not.

14 Q. What was the gist of that letter?

15 A. I believe the letter you're talking about
16 is a letter that was obtained from my father, saying
17 that he had given me this money as a gift.

18 Q. Was it a gift?

19 A. No, it was a loan.

20 Q. So did your father write that letter?

21 A. I can't answer that question.

22 Q. But there was such a letter?

23 A. That's right.

24 Q. And that would have been available to
25 lenders if they questioned that deposit into your

1 bank account?

2 A. Apparently.

3 Q. But it was not a gift?

4 A. No, it was not a gift.

5 Q. And you knew when you received it that it
6 was not a gift?

7 A. No.

8 Q. And when you received the cash back funds,
9 you repaid your father?

10 A. Yes, I did.

11 Q. What else did you do with that money?

12 A. I bought window coverings for the houses.

13 Q. The approximately 5,000 you spent on each
14 of the houses?

15 A. And put in garage door openers, because
16 they didn't have them, and had landscaping done to
17 the backyards.

18 Q. Did you make any loans to anyone?

19 A. I did.

20 Q. To whom?

21 A. I loaned Shaunna Ramly some money.

22 Q. How much, if you remember?

23 A. I don't remember off the top of my head.

24 I'm sure it's in here. But I don't remember exactly
25 how much I loaned her, to be truthful.

1 Q. And when you say "here," you mean probably
2 in your bank documents?

3 A. Yes.

4 Q. Did she repay the money?

5 A. Yes.

6 Q. And did she repay it quickly?

7 A. Yes, she did.

8 Q. Did you buy any other real estate using
9 any of that money?

10 A. Yes, I did.

11 Q. What did you buy?

12 A. I bought a condo and I bought another
13 house.

14 Q. Did that leave any money to make mortgage
15 payments on these three places?

16 A. Yes, it did.

17 Q. What was your plan, in terms of how long
18 you were going to hold on to these three properties?

19 A. Originally, I was to hold on to them for a
20 year or less.

21 Q. In that period of time, were you planning
22 on renting these houses out?

23 A. Initially, no.

24 Q. Did there come a time when you decided to
25 try to rent them out?

1 A. Yes.

2 Q. Were you able to?

3 A. Yes.

4 Q. And so there was some rental income?

5 A. Yes.

6 Q. For all three houses?

7 A. Yes.

8 Q. How much were you renting them for?

9 A. I believe the amount was \$1,650 a month.

10 Q. Sitting here today, would you be able to
11 average for each house how much rental income you
12 derived from each house?

13 A. When you say "average" --

14 Q. Did you have any expenses that you needed
15 to meet out of the rental income?

16 A. Well, I had to pay the mortgage,
17 certainly, the utilities. I had to pay for the
18 trash, you know, the City water/trash collection.

19 Q. So you had some expenses. Do you recall
20 what the mortgage payments on those houses were?

21 A. Not immediately off the top of my head,
22 because they were all a little different. But they
23 were like \$4,000, roughly, a month.

24 Q. For each?

25 A. For each.

1 Q. And did any rental income you got cover
2 the mortgage payments?

3 A. No. It paid for a little bit of them.

4 Q. Were you able to sell the houses within a
5 year?

6 A. No, I was not.

7 Q. Now, you bought in March of 2006. Did
8 there come a time when you stopped making mortgage
9 payments?

10 A. That's right, there was. November of '07.

11 Q. November of '07?

12 At the time you were making mortgage
13 payments on these houses, were you also making
14 mortgage payments on your primary residence which
15 was at Racheleigh?

16 A. Yes, I was.

17 Q. And I think you've now told us that you
18 bought some other real estate as a result of getting
19 some of this money back. Were you having to make
20 payments on -- is that one or more property?

21 A. More than one property.

22 Q. More than one. Were you having to make
23 payments on those properties as well?

24 A. Yes.

25 Q. Were those properties rented out?

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1 A. No.

2 Q. What finally happened to the three Oakland
3 Estates houses?

4 A. They went into foreclosure.

5 Q. Did you ever ask Mr. Powers about this
6 money back at closing, whether it was legal or not?

7 A. Yes.

8 Q. What was his response?

9 A. That it was legal, that he had had it
10 cleared through his attorneys.

11 Q. Okay. Did Mr. Powers ever ask you to use
12 any of the funds you got back at closing to make
13 loans to others?

14 A. At one point, yes.

15 Q. Was this another customer of his?

16 A. Yes.

17 Q. Did you do so?

18 A. No.

19 Q. Did you ever see any K&E invoices, K&E
20 Construction Company invoices?

21 A. No.

22 Q. Now at some point after all of this -- and
23 by "all of this," I mean after you bought the
24 houses, after you stopped making mortgage payments,
25 were you approached by FBI agents?

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1 A. No, I never was.

2 Q. There were no phone calls?

3 A. I don't recall any phone calls to me, no.

4 Q. Were you ever asked to talk with the FBI
5 or with the United States Attorney's office?

6 A. Yes, I was.

7 Q. And do you have any idea when that might
8 have been? Some time after what we've been talking
9 about?

10 A. Yes, it was after we what were talking
11 about.

12 Q. All right. And did you meet with the US
13 Attorney's Office?

14 A. Yes, I did.

15 Q. Did you bring an attorney?

16 A. Yes, I did.

17 Q. Okay. And at that point, was there also
18 an FBI agent or agents present?

19 A. Yes.

20 Q. And did they ask you questions, and did
21 you tell them about these transactions?

22 A. Yes, I did.

23 Q. And did you thereafter -- and this could
24 be some months, perhaps a year later -- did you sign
25 an agreement with the US Attorney's Office?

1 A. Yes, I did.

2 Q. And what was your understanding of that
3 agreement?

4 A. That I would agree to testify and provide
5 evidence. And in exchange, I would be offered
6 immunity for what I provided as far as testimony was
7 concerned.

8 Q. All right. And was there any kind of a
9 qualification put on your cooperation? That is to
10 say, were you asked to talk truthfully?

11 A. Absolutely, yes. I thought that was a
12 given.

13 Q. Okay. At the time you were doing these
14 transactions, did you think you were doing anything
15 wrong?

16 A. Not at the time, no.

17 Q. Why did you think you were not?

18 A. It was represented to me that these were
19 all legal things to do.

20 Q. That you could buy three residences within
21 a couple of weeks and call each of them a primary
22 residence?

23 A. Yes.

24 Q. And that you could buy all three with
25 false income information?

1 A. Yes.

2 Q. Who told you that?

3 A. Mr. Powers.

4 Q. Did you have anyone else advising you on
5 these deals?

6 A. No.

7 Q. Did you think, at the time, that
8 Mr. Powers had your best interest at heart?

9 A. At the time I did, yes.

10 Q. And did you trust him to represent your
11 best interest and to provide you the benefit of his
12 expertise and experience?

13 A. Yes, I did.

14 Q. As both a real estate agent and a mortgage
15 broker?

16 A. Yes, both.

17 Q. In retrospect, do you think he had your
18 best interest at heart?

19 A. I'd have to think about it at this point.

20 MS. HIGGINS: Your Honor, may I have a
21 moment, please?

22 THE COURT: Sure.

23 MS. HIGGINS: That's all the questions I
24 have at this time.

25 THE COURT: All right, thank you.

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1 This is going to be a 20-minute break.
2 Usually, we take 15, but there's another matter that
3 needs to be covered.

4 Do not discuss the case among yourselves.
5 If anyone should try to talk to you about the case,
6 advise me. And do not read, watch or listen to any
7 radio or television which reports on the trial.
8 Don't do any research on your own. Keep an open
9 mind until all the evidence has been received and
10 you've heard all the evidence.

11 This Court is recess for 20 minutes.

12 (Court in recess from 9:57 to 10:21.)

13 (Whereupon the jury entered the
14 courtroom.)

15 THE COURT: Please be seated.

16 MR. TALLON: Your Honor, could we approach
17 briefly?

18 THE COURT: Yes, sir.

19 (At the bench:)

20 MR. TALLON: Your Honor, it's 10:22. I
21 did not know what allowance or what restrictions, if
22 any, you were going to place on my
23 cross-examination. I have two requests for you,
24 Your Honor.

25 I would like to ask if you would give me a

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1 break at some point during my cross-examination so I
2 have an opportunity to regroup, be organized about
3 my exhibits, consult with my client and move on.

4 This is a very important cooperating
5 witness. She is involved in three transactions I
6 think the heart of the government's case is that
7 this woman was engaged in three transactions in
8 about a week. There's an awful lot of information
9 on my table, and there's a awful lot of new
10 information which arrived to me today.

11 I think I really do need a break to be
12 effective. And in that regard, I don't know what
13 Your Honor would consider reasonable, but it would
14 certainly be helpful for me to have some time after
15 the lunch hour to conclude my cross-examination.

16 THE COURT: Okay. Well, at this time I
17 was thinking if you could make a good showing after
18 lunch that you need some more time, I will certainly
19 consider it.

20 MR. TALLON: All right.

21 THE COURT: Okay.

22 MR. TALLON: Thank you.

23 (In open court:)

24

25

1 CROSS-EXAMINATION

2 BY MR. TALLON:

3 Q. Good morning, Ms. Prouty. My name is Dan

4 Tallon, and I'm assigned to represent Kevin Powers.

5 We have met once before; isn't that correct?

6 A. That's correct.

7 Q. And you're represented by Mr. Freedman,

8 David Freedman?

9 A. I have been, yes.

10 Q. And Ms. Shaunna Ramply, a friend of yours,
11 is also rented by Mr. Freedman?

12 A. Shaunna is represented by Ms. Freedman.

13 Q. Would you describe her as a friend?

14 A. Not necessarily.

15 Q. Is she a business partner of your
16 boyfriend, Gene Barnett?

17 A. Yes.

18 Q. She has been?

19 A. Yes.

20 Q. Is she currently?

21 A. No, I don't think so.

Q. You don't think so?

23 A. I think that Strong

24 but I'm not sure.

25 O. All rig

1 Strongbow may have been dissolved. I don't know.

2 But regardless of whether it was dissolved, was she
3 a in a business relationship with Gene Barnett?

4 A. At this time, no.

5 Q. Now, are you aware from any source that
6 Ms. Ramply testified in this case a couple days ago?

7 A. I imagine she has, yes.

8 Q. When you say "imagine," why do you imagine
9 that?

10 A. She bought properties before me. And I
11 would assume in these proceedings things go in a
12 time-wise fashion.

13 Q. Why would you assume she's already
14 testified?

15 A. I don't know. I'm just assuming that.

16 Q. Is it possible she would be testifying
17 next week? What's the source of your information?

18 A. There is no information.

19 Q. Did you talk with Shaunna Ramply about
20 your testimony or about her testimony in this case?

21 A. No.

22 Q. Did you talk with Gene Barnett about
23 Shaunna Ramply's testimony in this case?

24 A. No.

25 Q. Did you talk with Gene Barnett about this

1 case at all?

2 A. It's come up in conversation over the
3 years, yes.

4 Q. Now when you say "over the years," would
5 it be accurate to say that you have lived with
6 Mr. Barnett -- and I'm casting no aspersions --
7 lived with Mr. Barnett since about May of 2005?

8 A. Roughly.

9 Q. Roughly? And when you say it's come up in
10 conversation with Mr. Barnett over the years, what
11 is the it's that's come up in conversation with
12 Mr. Barnett?

13 A. These proceedings.

14 Q. Could you be a little more specific? In
15 other words, tell me more about what's come up in
16 conversation over the years with Gene Barnett in
17 these proceedings. I'd like to know more about what
18 you mean when you say "these proceedings."

19 A. Well --

20 MS. HIGGINS: Your Honor, objection if
21 it's going to elicit hearsay.

22 THE COURT: You are not permitted to say
23 what Mr. Barnett told you. But the question goes to
24 generally the subject matter. And as to that, you
25 could speak to that.

1 Overruled as to hearsay at this time.

2 Q. (By Mr. Tallon) What have you discussed?

3 Maybe you could take it in terms of subject areas.

4 A. In general conversation, obviously this is
5 something very stressful for both of us with the
6 conversations going towards -- I guess I don't
7 understand your question well enough to really
8 answer directly to you.

9 Q. All right. Gene Barnett is a licensed
10 real estate agent?

11 A. Yes, he is.

12 Q. Gene Barnett has been licensed as a real
13 estate agent since December of 2005; is that
14 correct?

15 A. I'd have to look at the records. But it's
16 something like that, yes.

17 Q. Gene Barnett is a good friend of Tim
18 Lesley, a real estate investor?

19 A. They're friends, yes.

20 Q. Gene Barnett engaged in something called a
21 Mastermind Group, which is an investing group, a
22 real estate investing group, as I understand it, in
23 which Tim Lesley was a member?

24 A. That's the first time I've heard of
25 Mastermind.

1 Q. You never heard of the Mastermind Group?

2 A. No, I haven't.

3 Q. Mr. Barnett would go out at night and come
4 back and tell you that he went to a meeting of the
5 Mastermind Group?

6 A. No.

7 Q. In your general conversations with Gene
8 Barnett, have you ever discussed mortgage lending?

9 A. Yes.

10 Q. Have you discussed real estate investing?

11 A. Somewhat, yes.

12 Q. Have you discussed signing notes for
13 mortgage loans?

14 A. Signing notes for mortgage loans?

15 Q. Yes.

16 A. No.

17 Q. Have you discussed with Mr. Barnett
18 purchase agreements?

19 A. No.

20 Q. Have you discussed --

21 A. Well, purchase agreements, that's sort of
22 a broad term. Yes.

23 Q. Real estate purchase agreements?

24 A. Yes.

25 Q. Have you discussed with Mr. Barnett owner

1 occupancy affidavits?

2 A. No.

3 Q. Have you ever sought Mr. Barnett's advice
4 as to the significance of owner -- excuse me,
5 occupancy affidavits, if I could use that phrase?

6 A. His advice? No.

7 Q. You never sought his advice?

8 A. No.

9 Q. Either before or after he became a real
10 estate agent?

11 MS. HIGGINS: Your Honor, it's not exactly
12 an objection. But Mr. Tallon was asking about
13 advice with respect to occupancy affidavits. He may
14 have broadened it now. I'm not sure --

15 THE COURT: He may have what?

16 MS. HIGGINS: Broadened it to other areas.

17 THE COURT: Okay. As I understand the
18 last question, it pertains to anything, not only
19 owner occupancy matters or any kind of real estate
20 advice whatsoever. Am I incorrect about that?

21 MR. TALLON: I was being specific in this
22 question as to owner occupancy affidavits.

23 THE COURT: All right.

24 MR. TALLON: So I'll rephrase it and make
25 it as clear as I can.

1 THE WITNESS: Thank you.

2 Q. (By Mr. Tallon) Have you ever, in your
3 general conversations with Gene Barnett, ever sought
4 his advice as to owner occupancy affidavits, either
5 before or after he became a licensed real estate
6 agent?

7 A. I never sought his advice on those things,
8 no.

9 Q. Did you ever discuss with Gene Barnett
10 your intention with respect to occupying houses as
11 primary residences?

12 A. Yes.

13 Q. When?

14 A. In March of '06.

15 Q. And did you discuss that with him before
16 you made the decision to purchase any of these three
17 houses that you're discussing today?

18 A. I can tell you that I told him, "I have no
19 intention of living in these houses." It wasn't to
20 seek his advice. But I told him what I was going to
21 do, and that was not live in these houses.

22 Q. You told Gene you had no intention of
23 living in these houses?

24 A. That's right.

25 Q. Did you ever discuss stated income loans

1 with Gene Barnett?

2 A. I think we've had general discussions
3 about that, yes.

4 Q. How general?

5 A. This was a long time ago. This was in
6 '06. So we talked about them generally, and it was
7 a long time ago.

8 Q. But not too long that you couldn't
9 remember the conversation, is it?

10 A. I don't remember specific conversations.

11 Q. Did you discuss renovations with Mr. Gene
12 Barnett?

13 A. Uh-huh. Yes, I did.

14 Q. And it's your testimony that you know
15 nothing about K&E Construction, and you have never
16 seen a K&E invoice?

17 A. I have not seen a K&E invoice.

18 Q. But it is your testimony that you received
19 three checks for renovations for three houses,
20 totaling \$240,000?

21 A. I received those cashier's checks, yes.

22 Q. Now, before you testified here today, did
23 you have any conversations with Tim Lesley?

24 A. I've talked to Tim a few times over the
25 years.

1 Q. Before you testified here today, did you
2 have any conversations with Tim Lesley about these
3 proceedings?

4 A. No.

5 Q. When was the last time you spoke with Tim
6 Lesley?

7 A. A long time ago.

8 Q. How long?

9 A. I don't recall exactly, but a long time
10 ago. Months, months, maybe a year.

11 Q. Help me out. How many months?

12 A. I don't know, I really don't.

13 Q. Did you talk with Tim Lesley before or
14 after you talked to me in October of 2010?

15 A. I've not talked to Tim after that.

16 Q. Did you talk to your father, Dean Perry,
17 about these proceedings?

18 A. No.

19 Q. You've never talked to your father about
20 your contacts with the FBI or anything in connection
21 with this case?

22 A. I had one conversation with him, and it
23 bothered him. And so I've made a very distinct
24 effort not bother him with that. It's disturbing
25 for a parent.

1 Q. Your father lives in Santa Fe?

2 A. No.

3 Q. Where does he live now?

4 A. In Albuquerque.

5 Q. He did live in Santa Fe?

6 A. Yes, he did.

7 Q. And was he a real estate investor?

8 A. No.

9 Q. And he loaned, but did not give, you
10 \$30,000?

11 A. That's right.

12 Q. And you told Ms. Higgins that you couldn't
13 or wouldn't answer the question as to whether or not
14 your father wrote the letter you were referring to
15 in your testimony?

16 A. What is it you're asking, exactly?

17 Q. Do you remember the letter that you say
18 that you didn't write --

19 A. Right.

20 Q. -- and you didn't see and you didn't sign?
21 Do you remember that letter?

22 A. I did not --

23 Q. Do you remember that letter?

24 A. Yes, I do.

25 Q. Okay. The next question was, did Dean

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1 Perry write that letter?

2 A. I don't know.

3 Q. Is it possible that Dean Perry wrote that
4 letter?

5 A. It's highly improbable that he would ever
6 have written that letter.

7 Q. I asked is it possible that Dean Perry
8 wrote that letter. Is Dean Perry the person who
9 gave you the \$30,000?

10 A. Yes.

11 Q. Now, how did you come to select
12 Mr. Freedman as your attorney?

13 MS. HIGGINS: Objection, Your Honor.
14 Relevance.

15 MR. TALLON: I have two cooperating
16 witnesses that are both represented by Mr. Freedman
17 as their attorney.

18 THE COURT: Well, we're getting into very
19 privileged areas in terms of attorney/client
20 privilege.

21 MR. TALLON: I'm just asking about
22 selection, Your Honor.

23 THE COURT: All right, I'll allow it.
24 And the question was, "How was it that you
25 selected Mr. Freedman as your counsel," as I recall.

1 MR. TALLON: Yes.

2 THE COURT: All right.

3 A. He was referred to me.

4 Q. (By Mr. Tallon) And who referred you to
5 Mr. Freedman?

6 A. A fellow by the name of Dave Stevens.

7 Q. Is he a real estate investor?

8 A. No, not that I know of.

9 Q. Did Dave Stevens also refer Shaunna Rampley
10 to Mr. Freedman?

11 A. I don't know how Shaunna came to be
12 represented by Freedman. I assume it was because I
13 was.

14 Q. And you were represented by Mr. Freedman
15 before you first spoke with the FBI?

16 A. That's right.

17 Q. And before you spoke to the FBI, did
18 Mr. Freedman and yourself prepare for that event,
19 that interview?

20 A. Yes.

21 Q. And how many times did you meet with
22 Mr. Freedman before that occurred?

23 A. I think I met with him twice before that
24 interview.

25 Q. And when did that first interview occur?

1 A. I don't recall the exact date. It was --
2 time is going by -- in '09, I guess, but I don't
3 remember the exact date.

4 Q. And how many times have you met with the
5 FBI in connection with your preparation for this
6 case?

7 A. I think it's been three times.

8 Q. Okay. When was the last meeting?

9 A. I think in December, December of this last
10 year.

11 Q. Okay. Remember, the answers are only in
12 your head. They're not over at that table. Do you
13 understand that?

14 A. I know. I was just wondering if there was
15 a piece of paper that I could refer to with dates.

16 Q. Now, in addition to the three properties
17 you've been discussing here today, you bought a
18 condo and you bought another residence?

19 A. That's right.

20 Q. And the condo is located on what street?

21 A. Vista del Rey.

22 Q. And the residence?

23 A. On Sprenger.

24 Q. That's S-P-R-E-N-G-E-R?

25 A. That's right.

1 Q. Sprenger, Northeast?

2 A. That's right.

3 Q. Did you buy any other properties besides

4 those two?

5 A. No.

6 Q. You mentioned a place called Racheleigh?

7 A. Yes.

8 Q. That's that was your residence in December

9 of 2005?

10 A. That's right.

11 Q. Okay. And do you still own those three

12 properties?

13 A. No, I don't own the Vista del Rey property

14 any longer.

15 Q. When was that sold?

16 A. I think it was October -- sorry. This is

17 all very intimidating. I had these things in my

18 head, and I can't remember them now. It was sold, I

19 think, in October of '09.

20 Q. Okay. Was that before or after you filed

21 for bankruptcy?

22 A. After.

23 Q. And would it be accurate that you filed

24 for bankruptcy about October of '08?

25 A. November of '08.

1 Q. So you held Vista del Rey for about a year
2 after you filed for bankruptcy?

3 A. We were trying to sell it and held it,
4 yes.

5 Q. You held it. But you did bankrupt out of
6 the debts that you incurred for the three properties
7 that you're talking about today?

8 A. That's right.

9 Q. You made a decision to bankrupt out of
10 these three properties, but to hang on to three
11 other properties; isn't that correct?

12 A. Yes.

13 Q. And that was a considered decision on your
14 part, wasn't it?

15 A. My goal was to try to hold on to the
16 Sprenger property and Racheleigh property, yes. I
17 wasn't going to make any money off of the Vista del
18 Rey property, so I didn't care one way or the other
19 there.

20 Q. Okay. But my question to you is you --
21 and how old are you?

22 A. Fifty-five.

23 Q. -- Joan Prouty, 55 years old, when you
24 filed for bankruptcy, you made a decision, an
25 election, to keep three properties and the debts

1 that went along with them, the condo, Sprenger and
2 Racheleigh; and to basically escape responsibility
3 for the debt that you incurred on three other
4 properties? You made that decision, right?

5 MS. HIGGINS: Your Honor, objection. I
6 think this might be calling for a legal conclusion.
7 I don't know what the bankruptcy pleadings say, and
8 so I'm not quite sure why decisions were made in the
9 bankruptcy.

10 MR. TALLON: Well, Your Honor --

11 THE COURT: Overruled.

12 A. Well, I didn't have control. Certainly my
13 goal was to hang on to these properties, but the
14 master or judge or whatever they call that in
15 bankruptcy is the one who decides.

16 Q. (By Mr. Tallon) Well, you didn't have any
17 input in that decision?

18 A. Not in the final decision, certainly.
19 That's decided by the judge.

20 Q. But you said your goal was to hang on to
21 those three properties? You didn't say it was the
22 bankruptcy trustee's goal. You said it was your
23 goal?

24 A. Sure.

25 Q. Okay. So your goal was to hang on to the

1 condo, Sprenger and Racheleigh; isn't that correct?

2 A. Sure.

3 Q. And you made a considered decision,
4 evaluating your circumstances. And as a 55 year old
5 physician's assistant, you decided, I'm going to
6 ditch these three, and I'm going to keep these
7 three, correct?

8 A. Well, I wouldn't know that "ditch" would
9 be right word. I could no longer pay for them.
10 They were in foreclosure. They were out of my
11 control.

12 Q. Those three properties that you ditched --
13 let me just use what I like -- the three that you
14 ditched were earning rental income; isn't that
15 right?

16 A. At that time, I don't know that they were.

17 Q. Between 2006 and 2008, if that's when you
18 filed the bankruptcy, I think November of 2008, the
19 three properties that you ditched were earning
20 rental income; isn't that correct?

21 A. During that time, but not after that.

22 Q. Not after the bankruptcy?

23 A. Right.

24 Q. Yes. Because you didn't own them anymore,
25 correct?

1 A. Right. They were in foreclosure.

2 Q. But listen to my question. Between 2006,
3 March 2006, and November 2008, the three properties
4 that you ditched were earning rental income; isn't
5 that correct?

6 A. During that time frame before, yes.

7 Q. How many thousand dollars?

8 A. Each one of them, when they were rented,
9 were receiving \$1,650 a month.

10 Q. Okay. How much rental income did you
11 receive from 6600 during that three-year period?

12 A. I don't know the exact amount. But each
13 month, until they went into foreclosure, I
14 received -- not from March, but from later in the
15 year, when they were rented, \$1,650 a month.

16 Q. Did you at any time have all three rented?

17 A. There were periods of time when all three
18 were rented, yes.

19 Q. And they were all rented for how much?

20 A. \$1,650. A month.

21 Q. So from March of 2006 until you defaulted
22 in -- excuse me, you were discharged in bankruptcy
23 in November of 2008, you were actively renting or
24 attempting to rent all of those three properties?

25 A. That's right.

1 Q. And do you have the numbers for the rental
2 income you received from those three properties
3 during that two-and-a-half-year period?

4 A. Not on me, no.

5 Q. Who was the property manager for those
6 three properties?

7 A. Initially I sought help from Jesse
8 Barnett. And then when he no longer wanted to do
9 that, I took that back over.

10 Q. So Jesse Barnett was your property
11 manager?

12 A. For a period of time, yes.

13 Q. How long?

14 A. It was a matter of a few months.

15 Q. What year was that?

16 A. That would have been '06.

17 Q. And then after Jesse Barnett -- is this
18 the same Jesse Barnett that worked for Worldwide
19 Mortgage?

20 A. Yes.

21 Q. The same Jesse Barnett who was a loan
22 officer for Worldwide Mortgage?

23 A. I don't know what his title was.

24 Q. And after Jesse Barnett -- is he Gene
25 Barnett's nephew that?

1 A. That's right.

2 Q. And after Jesse Barnett no longer wanted
3 to be property manager for the three properties you
4 ditched, who took over?

5 A. I did.

6 Q. In your busy life as a physician's
7 assistant, were you able to keep up with managing
8 those three rental properties?

9 A. Gene helped me.

10 Q. How much did Gene help you?

11 A. As much as I needed help with.

12 Q. So Gene, the real estate agent, helped you
13 be the property manager for the three ditched
14 properties starting maybe in about 2007 and
15 extending until the time they went into bankruptcy;
16 isn't that correct?

17 A. He helped me with lots of different
18 things, yes.

19 Q. With lots of different things. Did you
20 help him with anything?

21 A. I would like to think that in a supportive
22 relationship, yes, I would help him.

23 Q. Now, who performed the maintenance on the
24 six properties you owned during the time you owned
25 all six?

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1 A. I did some, Gene helped me with some,
2 Kathy helped. We all made an effort.
3 Q. So maintenance was performed by you, Gene,
4 Kathy. Who else?
5 A. My dad's wife helped me paint at one
6 point.
7 Q. What's her name?
8 A. Peggy.
9 Q. Peggy Perry?
10 A. Yes.
11 Q. Who else helped?
12 A. That's all I can think of off the top of
13 my head right now.
14 Q. What about Carl Barnett?
15 A. Probably Carl did help, because he
16 painted. That's true, he helped paint.
17 Q. It's also true that Carl owned a company
18 called All Real Estate Maintenance, true?
19 A. I guess, yeah. I don't recall the name of
20 his company. But if you say so, yes.
21 Q. Okay, you're guessing at the name. But
22 what you're not guessing at is that Carl Barnett did
23 in fact own and operate a real estate maintenance
24 company, yes?
25 A. Okay, yes.

1 Q. Don't say okay. Is that true?

2 A. Yes.

3 Q. And how much work did his company do in
4 connection with the maintenance of these properties?

5 A. I think he helped paint at one point and
6 clean up after people moved in or moved out. And he
7 helped with some painting and repair work at
8 Vista del Rey.

9 Q. Okay. So painting, cleanup, repair work
10 at Vista del Rey. Who did the landscaping that you
11 talked about doing?

12 A. Some guy. I think it was called Busy Bee
13 Landscape or Busy Bee something or other. I don't
14 remember the guy's name.

15 Q. And you just didn't put a lot of
16 landscaping into those properties, did you?

17 A. No, I did not.

18 Q. That was your decision, wasn't it?

19 A. That's right.

20 Q. You decided not to have a water feature,
21 right?

22 A. I don't know that I ever thought about a
23 water feature.

24 Q. But you're the one who decided how much
25 money or how much of your money you wanted to spend

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1 on landscaping; is that right?

2 A. That's right.

3 Q. You're the one who went to the store and
4 picked out the drapes, window coverings, if you want
5 to call them that, right?

6 A. Right.

7 Q. Who picked out the garage door opener?

8 A. I did.

9 Q. Now, you mentioned Vista del Rey. That's
10 a property you owned with Kathy?

11 A. Right.

12 Q. Okay. Do you know what a locum or locums
13 is?

14 A. In the medical profession, yes.

15 Q. And what is that?

16 A. A locums tenen is like a substitute
17 doctor.

18 Q. Did you say a locums tennant?

19 A. T-E-N-E-N, tenen.

20 Q. Okay, T-E-N-E-N. Locums tenen; is that
21 right?

22 A. That's right.

23 Q. So that's Latin, correct?

24 A. I guess, yes.

25 Q. And it's a substitute doctor, usually

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1 somebody who travels from city to city does ER work
2 could fill in anywhere really, right?

3 A. Depending upon their specialty, yes.

4 Q. Depending upon their specialty. In fact,
5 that phenomenon is throughout the medical industry?
6 Nurses do it, MRI techs do it, X-ray techs do it,
7 right?

8 A. Yes.

9 Q. I could probably name any occupation in
10 the medical field, And in that occupation, you will
11 find locums tenen, people who are travelers, yes?

12 A. That's probably true, yes.

13 Q. And Kathy Winston was a friend of yours?

14 A. Yes.

15 Q. And Kathy Winston was a partner in the
16 Vista del Rey property?

17 A. Yes.

18 Q. And Kathy Winston is a doctor?

19 A. She's a doctor, yes.

20 Q. And a co-investor with you on Vista del
21 Rey, correct?

22 A. That's right.

23 Q. Now we were talking a moment ago about how
24 you might have helped Gene. Gene Barnett was
25 discharged in bankruptcy about 2003 or '5?

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1 A. It was before I met him. I don't know
2 when exactly.

3 Q. But before May of 2005, yes?

4 A. Yes.

5 MS. HIGGINS: Your Honor, I'm going to
6 object to the relevance of this line of questioning.

7 MR. TALLON: The relevance will become
8 apparent.

9 THE COURT: Overruled temporarily.

10 Q. (By Mr. Tallon) Did Mr. Barnett have a
11 sufficiently good credit history and credit score so
12 that he could take out mortgage loans on his own?

13 A. I don't know Gene's scores.

14 Q. Were you aware in 2005 that Mr. Barnett
15 had filed for bankruptcy?

16 A. He told me he had.

17 Q. Without knowing his scores, did you know,
18 in the course of general discussions from time to
19 time that took place at the Racheleigh house, did
20 you know that his credit was poor?

21 A. I had to assume that. I did not know
22 that, but I assumed that.

23 Q. So you simply assumed, but did not confirm
24 with Gene that his credit was poor?

25 A. No, I didn't confirm with Gene that his

1 credit was poor.

2 Q. All right. Now, I think you told me once,
3 maybe it was in October, that you did this, made
4 these investing decisions that you made to attempt
5 to assure your financial future?

6 A. My goal was to try to get a good
7 retirement package put together.

8 Q. To retire early, yes?

9 A. Not necessarily, early, no.

10 Q. But have a nice package?

11 A. Right.

12 Q. And in 2005, when Gene was studying to be
13 a real estate agent and your relationship was
14 flourishing, were you and Gene ever -- did you and
15 Gene ever talk about investing in real estate so you
16 could put together a nice retirement package?

17 A. So that I could, yes.

18 Q. And is it your intention, as you sit here
19 today, to live -- or excuse me to continue your
20 relationship with Mr. Barnett indefinitely?

21 MS. HIGGINS: Objection, Your Honor.

22 Relevance.

23 THE COURT: Sustained.

24 Q. (By Mr. Tallon) Could the course of your
25 relationship change?

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1 A. Every day brings something new. It's
2 possible.

3 Q. Every day brings something new.

4 In the course of whatever discussions you
5 had about Mr. Barnett's credit, were you aware that
6 he had a very substantial and still has a very
7 substantial federal tax lien in his credit history?

8 A. No, I'm not aware of that.

9 Q. If I told you that he had a tax lien of
10 about 70- or \$80,000, would that surprise you?

11 MS. HIGGINS: Objection, Your Honor.

12 Relevance.

13 THE COURT: Sustained.

14 Q. (By Mr. Tallon) Does he have any
15 substantial debts that you know of?

16 A. He has his car loan, and that's really the
17 only debt that I know of.

18 Q. And maybe he doesn't have more than the
19 car loan because he can't get loans; isn't that
20 right?

21 A. I don't know that he's tried to get loans.

22 Q. You don't know that he's tried to get
23 loans? Is that a no?

24 A. That's a no.

25 Q. And that would be because you applied for

1 all of the loans; isn't that true?

2 A. He wasn't asking me to apply for loans for
3 these properties, so no.

4 Q. But that is the reason why -- Gene's poor
5 credit is the reason why you applied for these
6 loans; isn't that correct?

7 A. No, that's not correct. I didn't intend
8 for him to be involved in these. So no, I didn't
9 expect him to apply for these loans.

10 Q. Okay.

11 A. No.

12 Q. Back in 2006, in March 2006, would it be
13 accurate to say that you, Joan Prouty, did not
14 intend for Gene Barnett to be involved in these
15 loans?

16 A. That's right.

17 Q. That changed?

18 A. What changed?

19 Q. Let me ask you a different question.

20 In March of 2006, did you intend to have
21 Gene Barnett involved with the management and
22 maintenance and repair of these three properties?

23 A. I expected, as my life partner, that he
24 would be involved, yes.

25 Q. Life partner suggests to me that you

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1 intend to be together forever?

2 A. That would certainly be my goal.

3 Q. But every day brings something new?

4 A. There you go.

5 Q. Did you intend in March of 2006 to have
6 the assistance of Gene Barnett with these
7 properties?

8 MS. HIGGINS: Your Honor, objection.

9 Asked and answered, I think.

10 THE COURT: Well, come up please.

11 (At the bench:)

12 THE COURT: I don't want to be construed,
13 what I said a while ago, that I was simply giving
14 you time. You've spent over 20 minutes talking
15 about Gene Barnett, and you haven't even touched on
16 any of what I would say are the core issues.

17 MR. TALLON: That's one of the key issues,
18 Your Honor. This woman was an intimate relationship
19 with Gene Barnett. He was a real estate agent. He
20 was involved in the maintenance of these properties.
21 He was a licensed real estate agent before they were
22 purchased. He was involved in a investment real
23 estate investment group.

24 THE COURT: His name has come up. But
25 what I'm saying is I'm not going to let you go all

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1 day with her on this.

2 MR. TALLON: My focus is not going to be
3 on the government's documents. I'm not going to go
4 back through --

5 THE COURT: Well, I don't want you to be
6 surprised on the time.

7 MR. TALLON: Your Honor, as I said to you
8 the first thing this morning, I have no intent to
9 delay the Court. I'm trying to be organized and
10 effective in my cross-examination.

11 And I realize that at times, it may not be
12 apparent to the Court where I'm going. But I would
13 ask the Court to give me a little time and a little
14 latitude to connect some things up.

15 THE COURT: I appreciate that. I'm just
16 saying as much stuff that was covered, the
17 government used an hour and 14 minutes. So I would
18 guess you need something in the nature of close to
19 twice that amount of time. That's kind of my goal
20 on this, but don't expect to go all afternoon with
21 her. Go ahead.

22 MR. TALLON: I understand, Judge.

23 (In open court:)

24 Q. (By Mr. Tallon) Was it part of your plan
25 and your goal to use your properties -- or excuse

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1 me, to rent your properties to persons in the
2 medical profession?

3 A. The one at Vista del Rey, yes.

4 Q. So you did not intend to rent any of the
5 other five properties you owned to persons in the
6 medical profession, just one of them?

7 A. It wasn't a specific intent, no.

8 Q. Now after you bought these properties,
9 these three properties, you made an independent
10 decision to buy three more? Isn't that correct, or
11 two more?

12 A. Two more.

13 Q. Two more. And why did you do that?

14 A. The goal with Vista del Rey was to have a
15 property that was income generating and, as you
16 point out, rent them to folks in the medical
17 profession.

18 And the Sprenger property was to move
19 into, live in and ultimately sell for an investment.
20 but more of a long-term, plus living-in, type of
21 investment.

22 Q. Okay. So you were going to move from
23 Racheleigh to Sprenger; is that right?

24 A. That's right.

25 Q. And establish your choice? In fact, you

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1 brought Sprenger after you bought all these three
2 properties; isn't that right?

3 A. That was the last property purchased.

4 Q. Okay. So after you bought these three
5 properties and after you bought Vista del Rey, you
6 decided to buy Sprenger. And then you also decided
7 that you would make Sprenger your primary residence;
8 is that correct?

9 A. Yes.

10 Q. Mr. Powers had no hand in that
11 decision-making, did he?

12 A. No, he didn't.

13 Q. So instead of making 6600 Glenturret your
14 primary residence; 6805 your primary residence,
15 Glenturret; 6701 Glenlochy your primary residence;
16 Vista del Rey your primary residence; you skipped
17 over all of those transactions. And you decided,
18 along with your life partner, to make Sprenger your
19 primary residence?

20 A. I made that decision to make Sprenger my
21 residence, yes.

22 Q. But anywhere in that chain of properties,
23 you could have made a different decision and decided
24 to take any one of the previous four as your primary
25 residence?

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1 A. That's true.

2 Q. And isn't it true that you knew that there
3 was a distinct difference between a full document
4 refinance on Racheleigh and the stated income loans
5 that you got on every one of the other five
6 properties you owned? You know there's a
7 difference, don't you?

8 A. I understand there's a difference now,
9 yes.

10 Q. And you talked about take-home pay with
11 Ms. Higgins?

12 A. That's right.

13 Q. In addition to the gross income or the
14 gross salary that you earn at whatever medical
15 facility you work, do you have overtime at times?

16 A. Occasionally, yes.

17 Q. Do you have shift differentials?

18 A. No, I don't.

19 Q. Do you have bonuses?

20 A. Now I do. I didn't at the time.

21 Q. Do you have incentives?

22 A. No.

23 Q. Do you have quotas that relate to the
24 numbers of patients you handle?

25 A. No.

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1 Q. Does your salary vary, based on factors
2 other than your simple base income, your hourly
3 rate?

4 A. Only if I work overtime.

5 Q. But you have worked in, I think, three
6 different employments since 2006, three different
7 medical --

8 A. I picked up extra work. And I switched in
9 '07 from Lovelace to Pres.

10 Q. Okay. So you worked at Lovelace in '06?

11 A. Yes.

12 Q. And they pay better than Pres, don't they?

13 A. A little bit.

14 Q. And when you moved to Pres in '07, you had
15 less income from medical work?

16 A. I had less income per hour, but more in
17 the long run.

18 Q. More in the long run how?

19 A. As I was working overtime.

20 Q. Okay. So less per hour at Pres, but
21 overtime helped bring that number up?

22 A. That's right.

23 Q. And you said you picked up something --
24 you said you picked up extra work. Do you mean this
25 overtime?

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1 A. For a very short period of time, but that
2 was just last year.

3 Q. And what was that extra work?

4 A. I was working at the prison.

5 Q. Which one?

6 A. Los Lunas.

7 Q. Okay. So Central New Mexico --

8 A. Correctional Facility.

9 Q. -- Correctional Facility?

10 How do you like being in prison?

11 MS. HIGGINS: Objection, Your Honor.

12 THE COURT: Sustained.

13 MR. TALLON: Excuse me.

14 Q. (By Mr. Tallon) How do you like working at
15 the prison?

16 A. It's a great job.

17 Q. You get to leave, though?

18 A. I do.

19 Q. In addition to your medical earnings,, you
20 also had some pretty substantial rental income
21 during 2006, 2007, 2008; isn't that right?

22 A. Yes.

23 Q. And according to your testimony, you
24 started in March 2006 with \$240,000 that you told
25 Kevin Powers you were going to use for renovations,

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1 including landscaping. All right?

2 Tell me what you did with the remainder of
3 that \$240,000.

4 A. I used part of it to do the renovations.

5 I used part of it to -- well, first of all, pay my
6 father back. I used part of it to pay the
7 mortgages. I used part of it to buy Vista del Rey
8 and Sprenger.

9 Q. What else did you do with it?

10 A. There 's things to do with the property.
11 I loaned Shaunna Ramily money, and then she paid
12 that back.

13 Q. Did you pay Jesse Barnett any compensation
14 for the work he did?

15 A. Yes, I did.

16 Q. Did you pay Carl Barnett any compensation
17 for the work he did?

18 A. Yes, I did.

19 Q. Did you ever pay any money to Tim Lesley
20 for any reason?

21 A. No.

22 Q. Did you ever pay any money to Kathy
23 Winston, your doctor friend?

24 A. I paid the mortgage on the Vista del Rey
25 property. I didn't pay Kathy any money, no.

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1 Q. Did you ever loan her any money?

2 A. Not that I recall, no.

3 Q. Not that you recall?

4 A. I may have loaned her lunch money or
5 something like that, but not substantial money.

6 Q. So could you think a little harder? Is
7 there anything else you used to do with that
8 \$240,000? Let's say any expenditure over \$1,000.

9 A. Not that I can think of.

10 Q. Did you buy a car?

11 A. I did not use that money to buy the car,
12 no.

13 Q. When you say "that money," was --

14 A. I didn't use the money for the properties.
15 I did buy a car in February of '06, I think it was.

16 Q. Did you ever buy a boat?

17 A. No.

18 Q. What other assets do you have now?

19 A. I have my car that I bought then. I have
20 currently the Sprenger property, the Racheleigh
21 property. Assets, assets -- I have my 401(k), my
22 403(b). Pretty much everything got dwindled down to
23 nothing, truly nothing, in the bankruptcy.

24 Q. Okay. So dwindled down to nothing in the
25 bankruptcy means that after the bankruptcy, you

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1 retained Vista del Rey, which you bought in part
2 with the \$240,000. After the bankruptcy, you
3 dwindled down to owning Vista. You bought that with
4 some of the \$240,000. And you sold it after the
5 bankruptcy, correct?

6 A. Yes.

7 Q. And after the bankruptcy dwindled you
8 down, you retained the Sprenger property. You had
9 used some of the \$240,000 to buy the Sprenger
10 property. And you and Gene Barnett live in it
11 today?

12 A. We do, yes.

13 Q. And the Racheleigh property, which you
14 owned before you met Kevin Powers, you refinanced it
15 and took money out of it? You did a full document
16 loan for that one. And you used the money from
17 Racheleigh to buy the car that you still own; is
18 that right?

19 A. That's right.

20 Q. Your dad, who may or may not have written
21 the letter about the \$30,000, he's been paid back?

22 A. That's right.

23 Q. And you chose to do renovations. But you
24 only chose to do what sounds to me like no more than
25 \$15,000 in renovations on three properties?

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1 A. Yes. They were brand new properties.

2 Q. But you did intend to do renovations at
3 the time you closed on these loans, correct?

4 A. Yes.

5 Q. And you told Ms. Higgins that you used
6 some of that \$240,000 to pay the mortgages, yes?

7 A. Yes.

8 Q. And even though you dwindled down to some
9 impoverished state after the bankruptcy, before the
10 bankruptcy, you paid some of that money to Jesse
11 Barnett, a loan officer and property manager, yes?

12 A. Yes.

13 Q. You paid some of that money to Carl
14 Barnett, who owned a real estate maintenance
15 company, correct?

16 A. Yes.

17 Q. And you took some of that money and bought
18 the property -- you co-owned the property with Kathy
19 Winston at Vista del Rey?

20 A. That's right.

21 Q. And in the bankruptcy that dwindled you
22 down, you kept your 401(k) because in bankruptcy,
23 you can keep that, yes?

24 A. I guess that's how that works, yes.

25 Q. And the 403(b), another retirement

1 account?

2 A. Yes.

3 Q. You can keep that in bankruptcy because
4 the law allows you to keep that?

5 A. That's right.

6 Q. And what money did you use to pay the
7 mortgages on Vista del Rey and on Sprenger and on
8 Racheleigh after the bankruptcy was concluded?

9 Where did that money come from?

10 A. The money I earn monthly.

11 Q. Did any of it come from the \$240,000
12 you're talking about today?

13 A. After bankruptcy, there's no money.

14 Q. Before the bankruptcy you've told us where
15 some of the money went, right?

16 A. Right.

17 Q. And on each and every one of those
18 decisions to spend, Kevin Powers was not involved in
19 any of those decisions, was he?

20 A. The ones you described, no.

21 Q. When you testified talking with
22 Ms. Higgins, you said you didn't read the owner
23 occupancy affidavits?

24 A. No, I didn't.

25 Q. Did you read your bankruptcy pleadings?

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1 A. No, I didn't.

2 Q. Did you read any appraisals in this case?

3 A. I looked them over, yes.

4 Q. And isn't it true, Ms. Prouty, that every
5 one of the appraisals in this case came back for the
6 price that you paid for those houses; isn't that
7 correct?

8 A. I believe they did, yes. I'd have to look
9 at the exact figures.

10 Q. Well, let me see if this refreshes your
11 recollection. Do you remember that one of the three
12 houses actually came back with an appraised value
13 \$5,000 more than the \$490,000 you paid for it? Do
14 you remember that?

15 A. I don't recall that, no. But I'm sure
16 it's somewhere in here.

17 Q. Probably a lot of the answers are in
18 there. Do you know if the appraisals are in there?

19 A. I don't know.

20 Q. Did you ever discuss the amounts of the
21 appraisals with the FBI or the US Attorney?

22 A. The appraisals, no.

23 Q. You didn't review those in preparation for
24 your testimony, did you?

25 A. No.

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1 Q. Do you remember the person that did those
2 appraisals?

3 A. Yes, I do. Heidi Chavez.

4 Q. Heidi Chavez. She did all of them, yes?

5 A. If I recall, yes.

6 Q. And the Oakland Estates subdivision was in
7 a part of Albuquerque which, in 2006, was rapidly
8 appreciating; isn't that correct?

9 A. That's right.

10 Q. And Gene Barnett knew that, didn't he?

11 A. I think most people in Albuquerque knew
12 that.

13 Q. I didn't ask about most people. Gene
14 Barnett knew that?

15 A. Yes.

16 Q. Tim Lesley knew that?

17 A. I'd have to assume, yeah.

18 Q. Would you assume that Tim Lesley knew that
19 Oakland Estates was rapidly appreciating, very
20 rapidly appreciating, because Mr. Tim Lesley bought
21 a house in Oakland Estates on March 30, 2006?

22 MS. HIGGINS: Objection, Your Honor.

23 Relevance.

24 THE COURT: Well, there's a promise that
25 it will be connected. Overruled. It does seem so,

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1 but overruled.

2 A. I assume that Tim knew they were
3 appreciating, yes.

4 Q. (By Mr. Tallon) All right. Well, you've
5 just spoken with Ms. Higgins about three closings
6 that you went to in March of 2006?

7 A. Right.

8 Q. Gene Barnett, your intimate friend, life
9 partner, is a very good friend of Tim Lesley, yes?

10 A. Yes.

11 Q. They have the same interest, real estate
12 investing, correct?

13 A. They have a similar interest in real
14 estate investing, yes.

15 Q. And Mr. Leslie a very successful and
16 prudent and wise and responsible real estate
17 investor, isn't he?

18 A. Apparently, yes.

19 Q. And my question to you -- and don't
20 speculate if you don't want to -- is: Didn't you
21 know in March 2006 that Tim Lesley bought a house in
22 Oakland Estates that closed on March 30, 2006?

23 A. I didn't know when he closed. I knew he
24 was buying a house in Oakland Estates. I don't know
25 date that he closed.

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1 Q. Well, he bought a house on the same street
2 as one of your houses?

3 A. Right.

4 Q. Now, that wasn't too difficult, was it?

5 A. Difficult in what way? I'm sorry.

6 Q. One of the reasons the Oakland Estates
7 property subdivision was appreciating so well is
8 because there was an auto salvage yard just south of
9 it that was being eliminated; isn't that correct?

10 A. It was still there, and I understand it
11 was going to be eliminated.

12 Q. Uh-huh. So people in the know, like your
13 friend Gene Barnett and his friend Tim Lesley, knew
14 that that property was going to get this big ugly
15 out of there, and Oakland Estates was going to
16 skyrocket? And that's why all of you bought there;
17 isn't that correct?

18 A. I don't know that it was determined that
19 it was actually going to be going away rapidly.

20 Q. Are you telling me, Ms. Prouty --

21 MS. HIGGINS: Objection, Your Honor. I
22 think he ought to let the witness finish her answer.

23 THE COURT: Yes, sustained.

24 Q. (By Mr. Tallon) Are you telling me,
25 Ms. Prouty, that the knowledge that you're

Page 116

1 describing that you had, the knowledge that Gene
2 Barnett had, the knowledge that Tim Lesley had was
3 not a factor, if not a huge factor, in the fact that
4 you, just you, bought three houses in Oakland
5 Estates?

6 A. It was a factor.

7 Q. And isn't it also a factor that the reason
8 you applied for three loans in Oakland Estates is
9 because your life partner didn't have the
10 creditworthiness to apply for a loan?

11 A. No, that's not why I got the loans. I
12 wanted to do this myself.

13 Q. Yes, you wanted to do it yourself.

14 And isn't it true that to maximize the
15 benefits of the appreciation in Oakland Estates so
16 that life partners and business partners, like
17 Shaunna Ramply and Gene Barnett, to maximize that
18 benefit and in recognition of the fact that
19 Mr. Barnett had poor credit, his business partner is
20 the person who put her name on that loan
21 application?

22 A. I'm not sure I understand the question
23 you're asking. I'm sorry.

24 Q. All right. Gene Barnett was a partner of
25 Shaunna Ramply; yes or no?

Page 117

1 A. Yes.

2 Q. And Gene Barnett had poor credit; yes or
3 no?

4 A. Yes.

5 Q. Shaunna Ramply is a partner of Gene
6 Barnett in Strongbow Investments; yes or no?

7 A. Yes.

8 Q. Strongbow Investments is a full service
9 real estate investment company; yes or no?

10 A. Yes. I mean I don't know everything
11 about --

12 Q. Shaunna Ramply --

13 MS. HIGGINS: Objection --

14 THE COURT: Wait, wait. Yes, yes, yes,
15 yes. Sustained. Don't interrupt witness, please.

16 Do you want to finish that?

17 A. I don't know everything Strongbow does.

18 But I know they were making real estate investments,
19 yes.

20 Q. (By Mr. Tallon) Was the 6719 Glenturret
21 house purchased by Shaunna Ramply a real estate
22 investment?

23 A. As I understand it, yes, if that's the
24 address. I don't remember the address that's on
25 hers.

Page 118

1 Q. Did Shaunna Ramily actually occupy 6719
2 Glenturret?

3 A. She ultimately did. I don't know when she
4 moved in and out exactly. But she did, yes, at one
5 point.

6 Q. Now, you described sitting down with
7 Mr. Powers. Now I realize you just told us you made
8 your own decisions here. But you do remember
9 telling Ms. Higgins that you sat down with
10 Mr. Powers, and together you looked for properties
11 that were selling for less money than the
12 surrounding properties.

13 Do you remember telling Ms. Higgins that?

14 A. Yes.

15 Q. And did Mr. Barnett ever go to a sort of
16 specialized real estate investing classes that were
17 put on by a guy name Russ Whitney?

18 A. I guess that's what the guy's name was.
19 Whitney was all I knew.

20 Q. Okay, so Whitney classes. And you do know
21 that they related to real estate investment, yes?

22 A. That is what I understood, yes.

23 Q. And did Eugene ever tell you how much
24 money he and Shaunna Ramily spent on tuition for
25 those classes?

Page 119

1 A. No.

2 Q. Was it a lot of money?

3 A. I don't know.

4 Q. Do you know how he paid for those classes?

5 A. I don't know.

6 Q. You don't know? And this took place
7 before you met Gene Barnett, yes?

8 A. I think that it started before and
9 continued during the time we knew each other.

10 Q. Okay. So Mr. Barnett, Gene Barnett, had
11 begun to take the Whitney classes on real estate
12 investing before you met him. And he continued to
13 take them after you met him; is that correct?

14 A. As I understand it, yes.

15 Q. And did you ever discuss with your life
16 partner, Gene Barnett, anything about what he
17 learned in those real estate investing classes?

18 A. Little things, yes.

19 Q. Little things. Was one of those little
20 things one of the same little things that Mr. Powers
21 told you, which is if you look for properties that
22 are underpriced in relation to the homes surrounding
23 them, that might be a good buy?

24 MS. HIGGINS: Objection, Your Honor,
25 hearsay. I believe the question was, did

Page 120

1 Mr. Barnett tell her that?

2 THE COURT: Overruled.

3 THE WITNESS: Now, what was the question?

4 I'm sorry.

5 THE COURT: Little things, the same little
6 things that Mr. Powers told you. Which is if you
7 look for properties that are underpriced in relation
8 to the homes surrounding them, that may be a good
9 deal.

10 A. Yes.

11 Q. (By Mr. Tallon) Okay. And that's
12 something you knew before you met Mr. Powers; isn't
13 that correct?

14 A. Yes.

15 THE COURT: Well, you said that Mr. Powers
16 told you.

17 Q. (By Mr. Tallon) Yes, but all right.

18 Mr. Powers told you that, yes?

19 A. Yes.

20 Q. But didn't you know that before you met
21 Mr. Powers?

22 A. I heard that, know it. It's sort of a
23 bigger term. But yes, I know that, yes.

24 Q. You knew that before -- you knew about
25 this --

Page 121

1 A. Concept.

2 Q. -- concept before you met Mr. Powers, yes?

3 A. Correct.

4 Q. And you knew about it because there aren't
5 too many real estate agents who work in hospitals.

6 But you did live with a real estate agent, yes?

7 A. Yes.

8 Q. I'm glad you're laughing.

9 Now, did you tell Ms. Higgins that you
10 were not aware of the terms -- I think that was the
11 phrase, you were not aware of the terms -- of any of
12 these three purchases?

13 A. When you say "terms," I don't remember
14 saying that exactly to Ms. Higgins. But what are
15 you saying when you say "terms," so I make sure I
16 answer your question.

17 Q. I'll rephrase it. Were you aware of the
18 terms of the purchase agreement for 6600 Glenturret?

19 A. The terms being the amount and the
20 interest rate?

21 Q. You weren't aware of all the terms?

22 A. That's where I want to know what "terms"
23 means for you. Because it may mean something very
24 different for me, and I want to make sure I'm clear.

25 Q. Okay. Were you aware, in the 6600

Page 122

1 Glenturret transaction, that you would be paid, to
2 be used for renovations, a sum of around \$80,000?

3 A. Yes.

4 Q. Were you aware, in reference to the 6805
5 Glenturret transaction, that you would be paid the
6 sum of about \$80,000 for renovations?

7 A. Yes.

8 Q. And were you aware that with respect to
9 6701 Glenlochy, you would be paid the sum of about
10 \$80,000 for renovations?

11 A. Yes. So those terms, okay. I just wasn't
12 sure what you were asking. I'm sorry.

13 Q. Thank you for helping me. You said that
14 when you applied for these three loans, that
15 Mr. Powers' office was involved; is that right?

16 A. Right.

17 Q. And would it be accurate to say that his
18 office contained a number of different employees?

19 A. There were two other employees; two or
20 three other employees, yeah.

21 Q. And at the time you visited, you saw two
22 or three other employees?

23 A. There was Jodi Powers, his sister, and
24 then Natalie Martinez.

25 Q. And who was the third?

Page 123

1 A. Jesse Barnett.

2 Q. Jesse Barnett?

3 A. That was afterwards, yes.

4 Q. All right. Did you ever meet Michael
5 Delgado?

6 A. I never met him.

7 Q. And Jesse Barnett is someone who worked
8 there as well?

9 A. Yes.

10 Q. When you made your choices or choice --
11 well, let me rephrase.

12 As you were going through the notes with
13 Ms. Higgins, three different properties, two loans
14 for each property, isn't it true that each pair of
15 loans two, two, two, they all were different,
16 different interests rates, different splits in
17 amounts?

18 A. Yes.

19 Q. But isn't it also true that all three
20 pairs of loans were 100 percent loan to value; you
21 knew that?

22 A. That's right.

23 Q. You also knew that all three all three
24 pairs of loans were stated income loans?

25 A. Right.

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1 Q. You knew that?

2 When Mr. Powers sat down with you the
3 first time to discuss your application for a loan,
4 he advised you that you had quite a few product
5 choices -- excuse me, products to chose from; isn't
6 that true?

7 A. No.

8 Q. So you weren't aware that there was any
9 other product to buy, other than the product you
10 bought for 6600 Glenturret?

11 A. I don't know that we ever had a discussion
12 about products.

13 Q. Well --

14 A. About types of loans, I knew that, you
15 know, there was this regular type of loan one would
16 get. And then in order to buy these more expensive
17 properties, we needed to do what was called a stated
18 income loan.

19 Q. Uh-huh. And you were advised that there
20 was more than one thing to chose from when you chose
21 your product; isn't that right?

22 A. I knew about those two, yeah.

23 Q. You discussed what the payments would be,
24 yes?

25 A. Yeah, yes.

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1 Q. You discussed what the amount and the
2 interest rate was on the first loan, and you
3 discussed what the amount and the interest rate was
4 on the second loan, yes?

5 A. I don't know that we spent much time
6 talking about interest rates. I don't recall much
7 about that at all, no. But about the amounts, yes,
8 the total amounts.

9 Q. So are you saying that the interest rate
10 wasn't a material factor for you?

11 A. No, it wasn't a material factor.

12 Q. You didn't care?

13 A. Well, no.

14 Q. Okay. And is that your answer with
15 respect to all three properties?

16 A. Right.

17 Q. And I assume you didn't care about the
18 interest rate for the other two you bought later on?

19 A. About Sprenger, I did. And about
20 Vista del Rey, no. I don't recall. But I would
21 assume, looking back, I wouldn't have.

22 Q. Okay. So Sprenger is the only property
23 where you cared about the interest rate? The other
24 four, you didn't care?

25 A. Because I was going to be holding on to

Page 126

1 that longer.

2 Q. One of the conditions to getting each and
3 every pair of loans that you got was that you had to
4 indicate on those Form 10-03s that Ms. Higgins
5 showed you that you intended to occupy that as a
6 primary residence?

7 A. That's right.

8 Q. Have you ever looked at the Form 10-03
9 where the purpose for the loan is stated?

10 A. After all of this came about, I looked at
11 that to see that it was there, yes.

12 Q. Okay. So you're saying that you didn't
13 look at the Form 10-03, the first page, when you
14 signed it?

15 A. No.

16 Q. Okay. Do you remember that the purpose on
17 your Form 10-03 that you checked was purchase?

18 A. Well, I didn't check them. They were
19 already prechecked, and I just signed them.

20 Q. You never looked at what the purpose was?

21 A. No.

22 Q. If you looked at the purpose now, would it
23 be primary residence, or would it be purchase?

24 A. Well, there were two separate places. One
25 over here on right side said "Primary Residence,"

Page 127

1 and then on this column it had "Purchase" or
2 "Purchase Primary Residence."

3 Q. All right. Well, just so that you don't
4 get any more lost than you seem to be right now --

5 MS. HIGGINS: Objection, Your Honor.

6 THE COURT: Absolutely, absolutely.

7 Sustained.

8 Q. (By Mr. Tallon) All right. I'm looking
9 for -- how about Exhibit 96, page 492? And could we
10 focus in on, say, the top half of that page?

11 A. 492?

12 Q. 492, yes, in Exhibit 96. Okay.

13 And could you look for page 1 of that
14 document? Perhaps 491 I'm looking for. Yes, it is.
15 I'm sorry. So do you see page 491 up there --

16 A. Uh-huh.

17 Q. -- if you could look closely at the top
18 half of the page?

19 And if you go to, say, the left side of
20 the page, is the left side of the page visible to
21 you?

22 A. Uh-huh.

23 Q. Do you see the word, "purpose"?

24 A. "Purpose of loan"?

25 Q. Yes. And what is the purpose of this

Page 128

1 loan?

2 A. Purchase.

3 Q. Purchase, all right.

4 And can you go over to where it says

5 "primary residence"?

6 A. Uh-huh.

7 Q. And what does it say there?

8 A. "Primary residence" is marked.

9 Q. Okay. But what is the language that
10 precedes it?

11 A. "Property will be."

12 Q. "Property will be primary residence," is
13 that what it says? That's what you checked?

14 A. I didn't check these. They were prepared.

15 Q. Do you consider yourself to have completed
16 this loan application,, or do you consider the
17 completion of the loan application somebody else's
18 responsibility?

19 A. Completing it, filling it in, at the time
20 I thought it was someone else's responsibility.

21 Q. At the time?

22 A. Yes.

23 Q. And that's why you think you weren't doing
24 anything wrong?

25 A. Wrong in what way? I mean completing it,

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1 it was already completed. And all I had to do was
2 sign it.

3 Q. Did you also have the obligation and the
4 responsibility to review it?

5 A. I suppose I did.

6 Q. And as an example, as an analogy, as a
7 physician's assistant, you can prescribe
8 medications?

9 A. Yes, I can.

10 Q. Probably with as much freedom as a doctor
11 could; is that right?

12 A. Not quite, but yes.

13 Q. Almost as much; is that right?

14 A. Yes.

15 Q. And you have to be aware of what the
16 contraindications of medication could be for your
17 patient; isn't that right?

18 A. Yes.

19 Q. And when I've seen the prescriptions that
20 I get, they usually have the product information on
21 a piece of paper you wrap up inside the box or
22 whatever the container might be, very, very very
23 small print.

24 Do you ever read that to make sure that
25 you, as a physician's assistant, understand what

Page 130

1 you're giving to your patient and whether or not it
2 may not be a good thing for that patient?

3 A. Yes.

4 Q. You do that, don't you?

5 A. Yes.

6 Q. You did that yesterday probably, if you
7 worked yesterday?

8 A. I didn't work yesterday. I was hoping to
9 be here yesterday.

10 Q. But the last day you worked, that
11 responsibility, a grave responsibility, crossed your
12 mind at least, and perhaps you read that kind of
13 information?

14 A. Every prescription.

15 Q. When Mr. Powers sat down with you, isn't
16 true that he gave you -- explained to you that you
17 had choices, you had product choices?

18 Are you saying no or yes to that?

19 A. I'm not saying anything. It was never
20 really discussed, as to choices.

21 Q. Would it be accurate to say that as to
22 each of these three applications, Mr. Powers or a
23 member of the team in his office explained the same
24 thing about each of the three applications each
25 time?

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1 A. Each time we filled out an application,
2 they were prepared, and I was just asked to sign
3 them. We didn't talk about the applications,, per
4 se.

5 Q. You said you never considered interest
6 rate?

7 A. No.

8 Q. But you were aware, when you applied for
9 each of these three loans, that there were those
10 three little check boxes there that say "primary
11 residence"? They say -- what's the next -- I can't
12 read it from here, the second one.

13 A. It says "secondary residence" and
14 investment,".

15 Q. Secondary residence and investment. You
16 were aware of those three choices; isn't that right?

17 A. Actually, no.

18 Q. So your testimony is you weren't aware of
19 the three choices?

20 A. No.

21 Q. All right. So you're saying, for example,
22 that Mr. Powers didn't explain to you that you
23 needed to live in the residence to get a certain
24 loan product?

25 A. He told me that I should -- that they were

Page 132

1 going to be defined as a primary residence, and I
2 should at least have the perception of living in
3 them.

4 Q. Didn't he tell you that you have to move
5 in there at least for a while?

6 A. He said, "At least overnight."

7 Q. And he told you you had to move in to each
8 of those places; isn't that correct?

9 A. Yes.

10 Q. He said that you had to move into each of
11 those places to satisfy one of the conditions of the
12 loans, the three loans that you were applying for;
13 isn't that correct?

14 A. He said I should at least move in
15 overnight, yes.

16 Q. And did he also explain to you or did you
17 ever discuss with Mr. Barnett -- now I'm changing to
18 Mr. Barnett. Did you ever discuss the significance
19 or the meaning of those choices?

20 A. No.

21 Q. And it's your testimony that you never
22 told Mr. Powers what your choice was as to those
23 three options?

24 A. We never really discussed, no, not in that
25 fashion.

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1 Q. In what fashion was it discussed?

2 A. It was not a choice I made. This was just
3 what was going to be put on there. It wasn't really
4 a choice, it was just how the form was completed.

5 Q. Do you ever talk with Mr. Barnett simply
6 about his real estate business?

7 A. Sure.

8 Q. And do you ever discuss with him the
9 obligations he has as a real estate agent or broker?

10 A. Well, I don't know all of his obligations,
11 so I can't really speak to that with him.

12 Q. Does he ever talk to you about the need
13 for correctness in the contracts that he becomes
14 involved with?

15 A. Yes.

16 Q. And in that regard, have you ever thought
17 it was important to read the things that you signed?

18 A. Certainly after this episode, things have
19 become more more -- we've become more aware of all
20 of that.

21 Q. But Mr. Barnett was a licensed real estate
22 agent before you made the decisions that you made to
23 buy these properties?

24 A. He was licensed, not practicing. But yes.

25 Q. And Mr. Barnett is a gentleman who's about

Page 134

1 your age, possibly a little bit older?

2 A. Yes.

3 Q. And he has some life experience; isn't
4 that right?

5 A. Yes.

6 Q. He's run businesses; isn't that right?

7 A. That's right.

8 Q. He's engaged in contracts before; isn't
9 that right?

10 A. Yes.

11 Q. Isn't it true -- well, you could take a
12 look at -- we're on the same exhibit here, 96. And
13 if you could go to page 511 of 96.

14 A. (Witness complies.)

15 Q. Do you recognize what's portrayed on that
16 page and 512 and 513?

17 MR. TALLON: Okay. Starting with
18 page 511, if you could bring that up. Thank you,
19 Agent.

20 Q. (By Mr. Tallon) What do you recognize that
21 to be?

22 A. It says it's a lease.

23 Q. And what is the date on the lease?

24 A. It says March 10th of '06.

25 Q. And whose handwriting is on that first

1 page?

2 A. Kevin Powers'.

3 Q. And who is the person who's going to rent
4 8405 Racheleigh, Northeast?

5 A. Gene Barnett, spelled wrong.

6 Q. And if I move over to the next page,

7 512 --

8 MR. TALLON: And Your Honor, if I could
9 just step forward so I could read it a little better
10 myself.

11 THE COURT: Okay.

12 Q. (By Mr. Tallon) I just wanted to make sure
13 that what was on my copy is what you're seeing.

14 Gene Barnett, by this lease, intended to
15 begin occupying Racheleigh, Northeast on April 1,
16 2006; is that correct?

17 A. According to this, yes.

18 Q. And he said -- or he signed -- excuse me.

19 The lease was for a period of a year, yes?

20 A. That's what it says.

21 Q. \$1,600 a month, yes?

22 A. Yes.

23 Q. And by this lease Gene Barnett or Gene
24 Barnett and yourself agreed that Mr. Barnett should
25 send his rent payment to 6805 Glenturret Way,

Page 136

1 Northeast?

2 A. That's what it says, yes.

3 Q. And on the next page, 513, the person that
4 signed as landlord, not life partner, was Joan
5 Prouty?

6 A. That's what it says, yes.

7 Q. That's your signature?

8 A. Yes.

9 Q. And the resident is Gene Barnett? He
10 signed there, correct?

11 A. Right.

12 Q. On March 10, 2006, he was a licensed real
13 estate agent, and a gentleman probably in his
14 mid-fifties or so. Did he understand what he was
15 doing when he signed this lease?

16 A. You'd have to ask him.

17 Q. Did you understand what you were doing
18 when you signed this lease?

19 A. No.

20 Q. And did you understand, because Mr. Powers
21 had told you, that when you bought any property as a
22 primary residence, all right, a loan that was
23 intended -- a loan product that was intended for a
24 property to be used as a primary residence, isn't it
25 true take Mr. Powers told you that not only you had

Page 137

1 to move into that residence, but you needed to
2 support your move, your intention, in some reliable
3 and credible way?

4 And you signed this lease with your life
5 partner so as to support your intent, as you stated
6 it to Mr. Powers? Because you wanted that loan
7 product, you stated that you were going to occupy
8 6805 Glenturret as a primary residence; isn't that
9 right?

10 A. I don't think that was the intent of this
11 paper, no.

12 Q. Okay. Well, what I'm trying to get to is
13 you told this jury that you didn't discuss the three
14 options with Mr. Powers? That he never discussed it
15 with you, and you just signed it?

16 A. Right.

17 Q. Isn't that what you told the jury?

18 A. Right.

19 Q. And doesn't this piece of paper seem to
20 show, seem to suggest to you that you and
21 Mr. Barnett were both very aware that something had
22 to be done to support and to qualify for the loan
23 product that his creditworthy life partner was
24 applying for?

25 A. This was so that we could have

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1 documentation, in case the company, the loan
2 company, wanted to see some lease agreement.

3 It didn't have anything to do with me
4 moving into the properties, so I'm not sure I
5 understand the question.

6 Q. Let me rephrase it.

7 A. Thank you.

8 Q. Isn't it true that you had to execute a
9 lease as a condition of getting your loan for 6805
10 Glenturret, Northeast?

11 That's a question.

12 A. I don't know that. I don't know that. I
13 don't know that at all. I know that we had a lease
14 wrong. But we had this lease agreement so that it
15 could be made available if the loan companies needed
16 to see a lease agreement.

17 Q. Okay.

18 A. I just want to make sure I'm answering the
19 right question.

20 Q. I think your answer was you don't know,
21 basically?

22 A. Probably.

23 Q. All right. Ms. Prouty, is it for
24 Mr. Powers, is it for anybody employed by Worldwide
25 Mortgage, is it their business to tell you and your

Page 139

1 life partner what loan to apply for or where you and
2 your life partner should live or whether you and
3 your life partner are going to simply be landlord
4 and tenant?

5 A. Well, there are three questions --

6 Q. Is it the business of any employee of
7 Worldwide Mortgage to make that decision for you?

8 A. There are three questions that you
9 asked --

10 Q. Please --

11 A. Well, there are three --

12 MS. HIGGINS: Objection, Your Honor. The
13 question is compound.

14 THE COURT: Well, it is compound. I mean
15 there are several questions. Sustained, compound.

16 Q. (By Mr. Tallon) Is it for any employee of
17 Worldwide Mortgage to tell you and your life partner
18 where they should live?

19 A. No.

20 Q. Chosing a loan product was not a decision
21 for any employee at Worldwide Mortgage? It was your
22 decision, wasn't it?

23 A. No.

24 Q. Would you agree, Ms. Prouty, that this
25 lease suggests that Mr. Powers did in fact tell you

Page 140

1 that as to every loan you applied for as a primary
2 resident, that you needed to move into the property
3 to qualify for an owner occupied loan?

4 A. I don't know if the lease agreement
5 implied that. But he did tell me I needed to move
6 in to the properties, yes.

7 Q. And if he told you some other things that
8 you needed to do to qualify for the loan, maybe
9 you're just forgetting them? Are you forgetting
10 anything else he told you?

11 A. Possibly. Who knows? I mean, I give him
12 the information that he needed. Every time he asked
13 for information, I brought it to the office. I gave
14 him as much as I could every time he asked.

15 Q. But in the end, you made the decision?

16 A. That's right.

17 Q. Would it be accurate to say that Gene
18 Barnett was a silent partner in your three real
19 estate deals you're discussing?

20 A. A silent partner? He was certainly
21 helpful in everything that I needed help with.

22 Q. Have you heard the phrase, "silent
23 partner"?

24 A. I've heard the phrase. I don't know what
25 it's true definition is. I have heard that phrase.

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1 But I think it would probably be applied
2 differently, you know, by everybody.

3 I'm sure there's some specific legal term.

4 But you know, that's sort of a generic phrase.

5 Q. Let me ask you this: Except for the fact
6 that Mr. Barnett name's was not on the loan
7 application, was he a silent partner in these three
8 transactions?

9 A. He certainly was helpful. So a silent
10 partner in that way, yes.

11 Q. And you're aware that he did a transaction
12 with Shaunna Ramily; is that right?

13 A. Yes.

14 Q. Would it be accurate to say that
15 Mr. Barnett was a silent partner in the purchase
16 made by Shaunna Ramily?

17 A. I think it would be perceived that way.

18 MS. HIGGINS: Objection, Your Honor. I
19 don't know that this witness knows the answer to
20 that question.

21 THE COURT: Well, what's the legal
22 objection?

23 MS. HIGGINS: Irrelevant, immaterial.
24 I'll go with that.

25 THE COURT: Okay, overruled.

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1 Q. (By Mr. Tallon) Would it be accurate to
2 say that Gene Barnett, except for the fact that his
3 name wasn't on the loan application, that Gene
4 Barnett was a silent partner in the purchase of 6719
5 Glenturret, the property purchased by Shaunna
6 Ramply?

7 A. From what I know, yes.

8 Q. The property was purchased in the name of
9 Shaunna Ramply, but it was owned by Strongbow
10 Investments; isn't that correct?

11 A. As I understand it, yes.

12 Q. And in addition to being a silent partner
13 in your purchases, was he also your advisor?

14 A. Advisor as to what? I mean, he helped me
15 do a lot of different things because he knew people
16 in town that could get things done, like the garage
17 door opener and things like that. So yes, he was my
18 advisor in that way.

19 Q. Mr. Barnett --

20 A. But I didn't seek any kind of real estate
21 advice from him, no. I didn't think he had that
22 much experience.

23 Q. You said that Mr. Barnett knew a lot of
24 people in town that could get things done; isn't
25 that right?

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1 A. Uh-huh, yes.

2 Q. And isn't it true that he knew a lot of
3 people in the construction industry?

4 A. Yes.

5 Q. And isn't it true that he ran companies
6 that primarily did metal work?

7 A. That's what his company had been.

8 Q. Welding?

9 A. Yes.

10 Q. But based upon those contacts, those
11 numerous contacts that he had, he had the ability to
12 find the people who could do any renovations and
13 maintenance that were necessary on those three
14 houses; isn't that correct?

15 A. Right.

16 Q. And for that reason, you and Mr. Barnett
17 did not choose to use K&E Construction and the
18 contacts that Mr. Powers had, who could have done
19 that work for you?

20 A. I had no intention of using K&E
21 Construction for anything. The first I heard of it
22 was with the HUD, when it was down on that line.

23 Q. But Mr. Barnett knew what K&E Construction
24 was, didn't he?

25 A. I don't know. I don't know.

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1 Q. Did you know that Mr. Barnett had, with
2 Shaunna Ramily, in the year 2005, when you were with
3 Mr. Barnett, that Mr. Barnett and Ms. Ramily had
4 bought two properties to renovate, and they had used
5 Mr. Powers as their broker?

6 A. They used him as a broker, right.

7 Q. You knew that?

8 A. Right.

9 Q. And you knew that money had been taken out
10 from the loan to do renovations on those two
11 properties purchased in 2005?

12 A. That's what I heard, yes.

13 Q. You knew that?

14 And the money in 2005 was taken out, in a
15 sense, in the name of K&E Construction, wasn't it?

16 MS. HIGGINS: Objection, Your Honor. In a
17 sense? This witness does not know what was actually
18 on those forms or to whom the money was being paid.

19 THE COURT: What's the legal objection?

20 MS. HIGGINS: Mischaracterizing the facts.

21 THE COURT: Well, overruled. It does call
22 for speculation. Sustained.

23 Q. (By Mr. Tallon) And in March 2006 -- let
24 me rephrase.

25 By the time you and Mr. Barnett arrived

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1 at, say, March 10, 2006, isn't it true that
2 Mr. Barnett and you and Mr. Barnett's contacts were
3 in a position to perform any renovation or other
4 work that was necessary concerning any property you
5 purchased?

6 A. Right.

7 MR. TALLON: Your Honor, could I have a
8 moment over here?

9 THE COURT: Yes.

10 MR. TALLON: Could we take a look at
11 letter H8? I believe this exhibit has been
12 stipulated to.

13 THE COURT: What's the number, please?

14 MR. TALLON: Letter H, No. 8.

15 THE COURT: All right.

16 Q. (By Mr. Tallon) Okay. Are we on page 1 of
17 36?

18 THE COURT: Are you offering it now?

19 MR. TALLON: Yes.

20 THE COURT: Received.

21 (Defendant's Exhibit H8 admitted.)

22 MR. TALLON: And I'll just make a note
23 that what you see highlighted in yellow there is
24 something that I have added to the document.

25 Sometimes it might be helpful for some emphasis but

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1 not always helpful.

2 Q. Do you recognize what that first page is,
3 Ms. Prouty?

4 A. Yes, I do.

5 Q. And what is it?

6 A. It's my bankruptcy paperwork.

7 Q. All right, and that's page 1. If we could
8 go from page 1 of 36 and move ahead a few pages to
9 page 3 of 36. And looking at the top of the page
10 right there, do you see the date it was filed?

11 A. On this, I don't see the date.

12 Q. Left side. Left side, at the top half of
13 the page, towards the left side. It's in yellow.

14 A. 10/10/08.

15 Q. All right, and let's see --

16 A. It was heard on 11/4/08.

17 Q. Date of filing was 10/10. Heard on
18 11/4/08, okay.

19 And if we move to page 6 of 36, we see
20 what's called a Summary of Schedules. And you see
21 under Line A, Schedule for Real Property?

22 A. Uh-huh.

23 Q. Do you see that?

24 A. Uh-huh, yes.

25 Q. Okay. And if we could turn to page 7 of

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1 36, and if we could take a look at the -- let's see,
2 there's six boxes there that are highlighted. And
3 direct your attention to the three that are 6600
4 Glenturret, 6701 Glenlochy, 6805 Glenturret, do you
5 see those three?

6 A. Yes, I do.

7 Q. And it indicates, if you move to the
8 right, that the stated current value of each of
9 those properties was \$325,000?

10 A. Okay.

11 Q. Do you see that?

12 A. I'd have to see what the top -- the title
13 was.

14 Q. Okay. If you could drop it down a little
15 bit so that you so see --

16 A. Current value, okay.

17 Q. Current value of debtor's interest in the
18 property, without deducting any secured claim or
19 exemption. And in that column, the current value
20 for your three properties you discussed today was
21 \$325,000; is that correct?

22 A. Okay, yes.

23 Q. And isn't it true that prior to filing
24 this bankruptcy petition, that Gene Barnett was the
25 real estate agent with whom you listed these

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1 properties for sale?

2 A. Yes.

3 Q. So if Mr. Barnett was successful in
4 selling these three properties during the crash of
5 2008, he would have received real estate commissions
6 on each sale; isn't that correct?

7 MS. HIGGINS: Your Honor, objection.

8 Relevance.

9 THE COURT: Overruled on relevance.

10 Q. (By Mr. Tallon) And isn't it true that to
11 sell these three properties, Mr. Barnett had to
12 engage in a relationship with the lender on each of
13 these properties because each of these properties
14 were in default?

15 A. Yes.

16 Q. So when Mr. Barnett engaged in a
17 relationship with each of the three lenders and
18 said, "I would like to list and sell these
19 properties," do you know whether Mr. Barnett told
20 each lender that he was living with you?

21 A. I don't know whether he told them. And
22 that's not a question I've thought about.

23 Q. Okay. If you could turn to page 8 of 36?

24 A. (Witness complies.)

25 Q. This is personal property, Line 8. You're

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1 a scuba diver?

2 A. Yes.

3 Q. Do you and Mr. Barnett own a boat?

4 A. No.

5 Q. Okay, moving to page 18 of 36. Are we
6 there?

7 A. Eighteen, you said?

8 Q. Eighteen of 36. I'm just directing your
9 attention to the bottom of the page. There's a
10 credit card, Chase; is that right?

11 A. That's right.

12 Q. And I just use that as an example. Did
13 you eliminate all your credit card debt when you
14 filed this bankruptcy?

15 A. Yes.

16 Q. And when you got the \$240,000 in March of
17 2006, did you also pay off some substantial credit
18 card debt with that money?

19 A. Yes.

20 Q. Okay. And then if we could look at
21 page 23 of 36.

22 A. (Witness complies.)

23 Q. Okay. This page gives -- it's entitled
24 Current Income of Individual Debtor or Debtors; is
25 that right?

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1 A. Right.

2 Q. Okay. And it basically gives some figures
3 here. I won't go through all the figures. But this
4 was your representation as to what your income was
5 in October of 2008; isn't that right?

6 A. Right. That's from my paycheck stub.

7 Q. Okay. And this does not include any
8 fringe benefits, retirement plans, anything that
9 your employer gives you in addition to your base
10 salary, does it?

11 A. Right.

12 Q. Did you ever hear of salary.com?

13 A. No.

14 Q. Okay. You don't have a spouse, so
15 obviously the Spouse column is blank. But given the
16 fact that Mr. Barnett was your silent partner and
17 only a silent partner in these transactions, he did
18 not have to list his income here, did he?

19 A. No.

20 Q. Now, if you could turn to page 27 of 36?

21 A. (Witness complies.)

22 Q. And if we could look at paragraph 1 on
23 page 27 of 36, that's entitled Statement of
24 Financial Affairs.

25 Paragraph 1 has a title, Income From

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1 Employment or Operation of Business. Do you see
2 that?

3 A. Yes.

4 Q. And do you see in the yellow, it says,
5 "Gross amount of income"?

6 A. Right.

7 Q. And you represented in the fiscal year of
8 2006 that you made \$81,000 and change?

9 A. Yes.

10 Q. And then in 2007, you actually made almost
11 \$96,000 from your employment; is that correct?

12 A. That's right.

13 Q. All right. Now all this employment income
14 that you started earning in 2006 and 2007 and 2008,
15 that income would be in addition to the \$240,000 you
16 borrowed; isn't that right?

17 A. Yes.

18 Q. All right. And if we go to No. 2 on that
19 page, Income Other than From Employment or Operation
20 of Business, it shows that you earned \$30,000 and
21 change in 2006 rental income?

22 A. Okay.

23 Q. 36,000 and change in the year 2007 from
24 rental income?

25 A. Okay.

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1 Q. And then year to date in 2008, it looks
2 like maybe nine months of 2008, it looks like your
3 rental income was declining, and it was only about
4 \$15,000 for the nine months?

5 A. Okay.

6 Q. All of that money is money you received in
7 addition to the \$240,000 you borrowed on these three
8 houses? And it was in addition to the income you
9 earned as a physician's assistant; isn't that right?

10 A. That's right.

11 Q. Now, if you could turn to page 30 of 36 of
12 this petition?

13 A. (Witness complies.)

14 Q. And I direct your attention to paragraph 6
15 on this page, do you see the words "assignments" and
16 "receiverships"?

17 A. Yes.

18 Q. Now, you don't know Mark Harmon, do you?

19 A. I've met him a couple times.

20 Q. And how have you met him?

21 A. He was an investor that got a hold of me.

22 And I don't understand all this stuff real well.

23 But he would buy the redemption rights, so that when
24 things went into foreclosure, as I understand it,
25 when things went into foreclosure he had a certain

1 period of time where he could try to sell the
2 property because he had those rights.

3 Q. Isn't it true he had a period of time in
4 which he would have the first right to buy that
5 property?

6 A. Right.

7 Q. Yes. And he could buy it from Gene
8 Barnett, couldn't he?

9 A. He could buy it from the bank.

10 Q. Okay. But who made the decision to give
11 those redemption rights to Mark Harmon, of all
12 people?

13 A. I did.

14 Q. And because you don't understand
15 redemption rights, were you advised on that decision
16 by Gene Barnett?

17 A. I suppose he told me about it, yes. So if
18 that's considered advice, yes.

19 Q. All right. You would not have known Mark
20 Harmon, the real estate investor, if you didn't live
21 with a real estate agent; isn't that right?

22 A. Actually, Mark Harmon was friends with the
23 tenant in 6600 Glenturret. So that's how I came to
24 know Mark. The tenant referred him.

25 Q. All right. And your tenant at 6600 knew

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1 you were in distress?

2 A. Yes.

3 Q. Knew the property was in default?

4 A. Right.

5 Q. Do you know anyone who lives in these
6 three properties we've been talking about, do you
7 know who's living there today?

8 A. No, I don't.

9 THE COURT: Is this a good place to take a
10 break?

11 MR. TALLON: Yes.

12 THE COURT: Court will be in recess until
13 1:00. Do not discuss the case among yourselves or
14 with others or in anyone's presence. If anyone
15 should try to discuss the case with you, advise me
16 immediately. Do not read, watch or listen to radio
17 or television or news reports of the trial. Keep an
18 open mind until all the evidence has been received
19 and you've heard the closing arguments and
20 instructions.

21 Court is in recess until 1:00.

22 (Court in recess from 12:00 to 1:09.)

23 (Whereupon the jury entered the
24 courtroom.)

25 THE COURT: Please be seated. You may

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1 continue your interrogation.

2 Q. (By Mr. Tallon) Ms. Prouty, I'd like to
3 talk to you a little bit more about your bankruptcy
4 petition. And shortly before the lunch hour began,
5 we were talking about redemption rights. Do you
6 remember that?

7 A. Yes.

8 Q. And I'm not sure if we had a chance to
9 discuss them as I would like. The redemption rights
10 were sold to a Mark Harmon?

11 A. Yes.

12 Q. And did you sell the redemption rights to
13 all three of the properties that you are discussed
14 today to Mark Harmon?

15 A. I didn't sell anything. I gave them to
16 him. I didn't know I could sell them until later
17 on.

18 Q. Okay. So you assigned them for no
19 compensation?

20 A. Right.

21 Q. And do you know he what he did with those?

22 A. I believe he sold the house at 6805
23 Glenturret. But as I recall, he didn't have the
24 redemption rights on the others. I don't remember,
25 but I don't think he did.

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1 Q. Okay, so only on 6805? I assume before he
2 sold 6805, he redeemed 6805; is that right?

3 A. I don't understand the process. So if
4 that's how it works, I would assume, yes.

5 Q. All right. But when he actually did the
6 sale part to whoever bought it, who represented him
7 on that sale?

8 A. I don't know. Probably -- I don't know.
9 I don't know.

10 Q. All right. Can you exclude Gene Barnett
11 from the possible people who represented him on the
12 sale?

13 A. No, I can't exclude Gene. I don't know,
14 though.

15 MR. TALLON: Could we now move to another
16 exhibit? And this would be Exhibit J24. And before
17 I show it, I believe it's stipulated to.

18 Let me make sure that the government is
19 satisfied that they have stipulated to this.

20 MS. HIGGINS: J24 has been stipulated to.

21 THE COURT: Received.

22 Q. (By Mr. Tallon) Okay. Do you see that
23 first page that says at the top, "separator sheet"?

24 A. Yes.

25 Q. Okay. Could we turn to the next page of

1 that exhibit?

2 A. (Witness complies.)

3 Q. And do you see a letter there?

4 A. Yes.

5 Q. A letter dated March 19, 2008?

6 A. Yes.

7 Q. And I'm just directing your attention to
8 the signature line on that letter. It says Joan
9 Prouty. Is that your signature above it?

10 A. Yes, it is.

11 Q. And do you see the writing at the top, the
12 handwriting that says, it looks like, "Attention
13 Nicole Stoner"?

14 A. Yes.

15 Q. Do you recognize that handwriting?

16 A. Yes.

17 Q. And whose is it?

18 A. Gene's.

19 MR. TALLON: Now if you could scroll down
20 and just show the bottom half of the page. A little
21 bit further, please; a little more. Okay.

22 Q. (By Mr. Tallon) Do you see that bottom
23 line in yellow? The writing is, I think, upside
24 down to you and I, but what does that say on there?

25 A. It says, "April 1st, '06, 10:01, Gene and

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1 Joan, (505) 898-9692."

2 Q. Now is that Gene and Joan the Gene and
3 Joan that we've been talking about today?

4 A. That's how I set up the fax machine.

5 Q. All right. No last names are indicated
6 there. Is that your fax number?

7 A. No, that's the home number.

8 Q. Okay, that's the home number.

9 Now, is that the home number at Sprenger?

10 A. Yes.

11 Q. And does Gene Barnett operate a business
12 or a company out of Sprenger that is supposed to be
13 doing real estate investment?

14 A. No. He's a Realtor, and he uses a home
15 office.

16 Q. Okay. But from that home office, does he
17 have a company that goes by three letters, you know,
18 like ABC? I don't have it in my mind right now, so
19 I'm asking you if you remember which one, it is.

20 A. No.

21 Q. All right, I'll get back to that later.

22 If we could move to the next page. And at
23 the top, you see Nicole Stoner, that name, Gene
24 Barnett. Does that appear to be Gene's handwriting?

25 A. It does.

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1 Q. A fax transmittal from April 8, 2008?

2 A. April 10, 2008.

3 Q. I'm sorry, April 10th. I misspoke. All
4 of that writing there is Gene's writing, yes?

5 A. That's right.

6 Q. And this appears to be a fax transmittal
7 to Suntrust Mortgage?

8 A. That's what it appears to be, yes.

9 Q. All right. If we could skip -- let's see,
10 three pages after the one we're looking at, and it
11 appears to be another fax transmittal.

12 A. (Witness complies.)

13 Q. Okay. Let's go to Exhibit J25, which I
14 believe is also stipulated to.

15 Do you see on that page what appears to be
16 a fax transmittal?

17 A. That's right, yes.

18 Q. All right. And again, Gene Barnett and
19 Nicole Stoner are involved in this transmission?

20 A. Yes.

21 Q. It appears that Ms. Stoner works for
22 Suntrust Mortgage?

23 A. I guess, yes.

24 Q. The transmittal seems to relate to a short
25 sale purchase agreement?

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1 A. Yes.

2 Q. Is this a transaction that Mr. Barnett was
3 conducting as a Realtor?

4 A. Yes.

5 Q. And he would be paid commissions if this
6 transaction was completed, the sale was completed?

7 A. Yes.

8 Q. And would he have been paid commissions by
9 Suntrust Mortgage?

10 A. I guess, yes.

11 Q. And if we could go to the next page and
12 sort of focus in on the bottom of that page. And in
13 the yellow there, do you see in that yellow box,
14 "Gene Barnett, All Star Realty"?

15 A. Yes.

16 Q. And that is the company he was working for
17 at that time?

18 A. What was the date? I don't remember the
19 date that he changed to Keller Williams. He had
20 worked for All Star and then moved to Keller
21 Williams. I don't know for sure.

22 Q. Yes, I agree. Because if we go back to
23 the first fax transmittal form and the second, they
24 both have Keller Williams Realty on top; is that
25 right?

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1 A. Right.

2 Q. And then on this line on the page you're
3 looking at right now, he indicates his affiliation
4 at All Star Realty?

5 A. What does that say? I can't read through
6 the yellow. What is the name and --

7 Q. I think it reads, "What is the Realtor's
8 name and phone number?"

9 A. Okay.

10 Q. Does that seem accurate to you?

11 A. I guess that's what it says. I can't
12 really make it out.

13 Q. Do you know if your relationship with Gene
14 Barnett was ever disclosed to Suntrust Mortgage, the
15 company whose loan you defaulted on?

16 A. I don't know one way or the other.

17 Q. Did Suntrust Mortgage know that Gene
18 Barnett was in fact your silent partner?

19 A. I don't know.

20 Q. Do you know if a sale was completed with
21 respect to this property by Gene Barnett?

22 A. I don't know.

23 Q. Okay. If we could go now to Exhibit J11.

24 A. (Witness complies.)

25 Q. Okay, Ms. Prouty. Does that appear to be

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1 a Web page to you?

2 A. I guess.

3 MS. HIGGINS: Objection, Your Honor. It
4 calls for speculation, and the witness is
5 speculating.

6 THE COURT: Well, just ask her if it
7 appears to be. Overruled.

8 Q. (By Mr. Tallon) Does it appear to be a Web
9 page to you?

10 A. I guess, yes.

11 Q. And everything is a .com these days?

12 A. Right.

13 Q. Do you see in the upper left portion of
14 that page, in yellow, "salary.com"?

15 A. Right.

16 Q. And if can you go sort of to the middle
17 top of the page, do you see those words in a box,
18 "salary wizard"?

19 A. Yes.

20 Q. And do you see underneath that box, it's
21 highlighted, the words to the effect the median
22 expected salary for a typical physician
23 assistant-medical in Albuquerque, New Mexico, 87122
24 Zip code, is \$101,164. Do you see that?

25 A. I see that. I want that job.

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1 Q. Okay. Somebody has got it, it appears.

2 Do you see this little pie-shaped chart down below
3 that?

4 A. I do.

5 Q. And do you see to the left of the
6 pie-shaped chart, they talk about -- you know,
7 there's a list of check boxes -- base salary,
8 bonuses, Social Security, 401(k), and there's about
9 four others?

10 A. I see that.

11 Q. Okay. And then beneath what we've just
12 been reading do you see a box that contains the bold
13 face words "basic salary report"?

14 A. I do.

15 Q. And I won't ask you to read it, but
16 there's some further description of maybe what a
17 basic salary report consists of?

18 A. Okay, yes.

19 Q. Okay. Now if we could turn to the next
20 page, which is Exhibit J12 -- and I believe this is
21 stipulated to as well -- do you see a letter dated
22 March 10, 2006?

23 A. Yes.

24 Q. Is that your signature on that letter?

25 A. Yes.

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1 Q. And could you read it to the jury?

2 A. "To whom it may concern: The nature of
3 the business I am in is in the medical field. I
4 have been in the same line of work for over seven
5 years and receive bonuses and promotions frequently.
6 I also don't mind working overtime, and I get paid
7 well by doing so. I earn over \$11,000 per month and
8 intend to be earning even more."

9 Q. Okay. Could we turn to the next page?

10 And I think it's also part of Exhibit J2. It's the
11 second page of Exhibit J12.

12 Do you recognize your signature on that
13 letter?

14 A. Yes, that's mine.

15 Q. Okay. Can you read it to the jury?

16 A. "To the Lender: Please accept this letter
17 as an explanation on how I'm planning on making my
18 new mortgage payment. I make sufficient money. I
19 have plenty of reserves in my accounts. My income
20 and job is very stable, and I will not have any
21 problems making payments of \$3,500 a month. If you
22 have any further questions, please feel free to
23 call."

24 Q. "Thank you, Joan Prouty"?

25 A. Yes.

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1 Q. Now, that letter is addressed to the
2 lender. But if we back up a page and look at the
3 letter we first looked at, that's addressed To Whom
4 It May Concern, isn't it true that the To Whom It
5 May Concern letter was a letter to the lender?

6 A. I guess, yes.

7 Q. And if we could go one page further, now
8 we're on Exhibit J13 --

9 THE COURT: Is this agreed?

10 MR. TALLON: I believe this is stipulated
11 to as well.

12 THE COURT: Received.

13 Q. (By Mr. Tallon) It's a little hard to
14 read. It's just the copy I have. But it says "Gift
15 Letter" at the top, doesn't it?

16 A. Uh-huh. Yes, it does.

17 Q. And it appears to be something of a form
18 letter, but it does have a signature line and place
19 for someone to print below it. Does the letter
20 appear to be signed by your father, Dean Perry?

21 A. Yes, it does.

22 Q. And he does describe the \$30,000 that he
23 gave to you as a gift, and not a loan?

24 A. That's how it's described, yes.

25 Q. And would you have had to transmit this

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1 letter to your father to get his signature on it
2 when he lived at 109 Verano Loop, Santa Fe; isn't
3 that correct?

4 A. Well, there are a couple things. I didn't
5 transmit it to him. And he was using that as a
6 mailing address at the time because he was traveling
7 in his RV.

8 Q. Okay. Now if we could look at
9 Exhibit J19 --

10 THE COURT: Also stipulated?

11 MR. TALLON: I believe it is stipulated as
12 well. Yes, it is.

13 THE COURT: Received.

14 MR. TALLON: Actually, we're at J19. Stay
15 right there, please.

16 Q. (By Mr. Tallon) All right. J19 consists
17 of three forms. And do you see the title of that
18 form?

19 A. Yes, I see the Tax Information
20 Authorization.

21 Q. And is that called a Form 8821?

22 A. That's what it says, yes.

23 Q. All right. And if we could, still within
24 the same Exhibit 19, turn about three pages, we're
25 looking for a Form 4506.

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1 All right. Could we go down to the bottom
2 of that page?

3 A. (Witness complies.)

4 Q. Is that your signature on Form 4506?

5 A. Yes.

6 Q. And if we move to the top and look at the
7 title of this form, what is that title?

8 A. Form 4506, Request for Copy of Tax Return.

9 Q. So you gave permission to disclose some
10 very private information to any lender that might
11 want to consider approving your loan; isn't that
12 right?

13 A. That's right.

14 Q. If we could go, still within Exhibit J19,
15 I think about two pages, and we're looking for
16 Form 4506-T. Do you see that in front of you now?

17 A. I do.

18 Q. Could we drop down to the bottom half?

19 And that your signature at the bottom of that form?

20 A. Yes, it is.

21 Q. And the title of that form is, at the top?

22 A. Form 4506-T, Request for Transcript of Tax
23 Return.

24 Q. All right. And if we could back up about
25 six pages to Form 8821 and drop to the bottom of

Page 168

1 that page, is that your signature again?

2 A. Yes, it is.

3 Q. And there's a date next to your signature?

4 A. 2/16/06.

5 Q. Okay. Now, do you recall if you signed
6 the other two forms on the same date, February 16,
7 '06?

8 A. I would have to look. I don't recall.

9 Q. All right. Well, let's go quickly back to
10 4506.

11 A. Yes.

12 Q. The date of your signature is what?

13 A. 2/16/06.

14 Q. And then go a couple more pages to 4506-T.

15 A. 2/16/06.

16 Q. Okay. Now could we back up to
17 Exhibit J17, also stipulated to?

18 A. (Witness complies.)

19 Q. Okay. Can you tell me what the title is
20 of J17?

21 A. It says Borrower's Certification and
22 Authorization.

23 Q. Okay. If you could look at the top half
24 of that form, and the top half seems to be entitled
25 Certification.

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1 And when you signed this form -- we
2 haven't gotten to your signature yet. But when you
3 signed this form, were you signing this making a
4 certification by Joan Prouty to Worldwide Mortgage?

5 A. To Worldwide Mortgage?

6 Q. Yes.

7 A. I don't know exactly --

8 Q. Well, do you see on paragraph 1 --

9 A. Okay, yes.

10 Q. -- it says, "I/we" -- but in this case, it
11 was just I -- "I have applied for a mortgage loan
12 through Worldwide Mortgage," period?

13 A. It would be through them, yes.

14 Q. Okay, and then it goes on. I won't read
15 all the language. But if could you drop down to
16 paragraph 3, could you read that part of the
17 certification?

18 A. Sure. It says, "I/we fully understand
19 that it is a federal crime, punishable by fine or
20 imprisonment or both, to knowingly make any false
21 statements when applying for this mortgage as
22 applicable under the provisions of Title 18, United
23 States Code, Section 1014."

24 Q. Okay. And when you were contacted by the
25 FBI or by the US Attorney's Office, isn't it true

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1 that you told them that you didn't think you had
2 done anything wrong in connection with these
3 proceedings?

4 A. That's right.

5 Q. And when you spoke with your attorney,
6 Richard --

7 A. David Freedman.

8 Q. David Freedman, I'm sorry. Did you also
9 tell him that you did not think you did anything
10 wrong?

11 A. That's right.

12 Q. And did you at some later time after
13 February 16th, make any certifications like this
14 one, except you made those certifications to the
15 lenders that you eventually got your loans from?

16 A. Apparently in all the closing documents,
17 there were these similar statements.

18 Q. Okay. But first and foremost, you gave
19 this assurance to Worldwide Mortgage that you were
20 telling the truth, and you signed it.

21 And you still believe you don't think
22 you've done anything wrong; is that right?

23 A. I now believe I've done something wrong,
24 but at the time I did not.

25 Q. At that time, did you have any kind of

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1 criminal intent when you signed this document that
2 is J17 in favor of Worldwide Mortgage?

3 A. No, I didn't.

4 MS. HIGGINS: Objection, Your Honor.

5 Calls for a legal conclusion.

6 MR. TALLON: I think it's a state of mind,
7 Your Honor.

8 THE COURT: Overruled.

9 At the time, did you have any kind of
10 criminal intent when you signed this document that's
11 J17 in favor of Worldwide Mortgage?

12 THE WITNESS: No, I didn't have any
13 criminal intent.

14 MR. TALLON: Could we go now to
15 Exhibit I24, which I believe is stipulated to?

16 THE COURT: Received.

17 Q. (By Mr. Tallon) I believe the page number
18 at the bottom of this is AHL515. Do you see that at
19 the bottom?

20 A. I do.

21 Q. Okay. And if you could look towards the
22 top half of that document -- maybe you could bring
23 it in a little bit, because it's small print -- do
24 you see the representative of Worldwide Mortgage
25 that this was sent to?

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1 A. Jodi Powers.

2 Q. And did you work with Jodi Powers during
3 the processing of your three loans?

4 A. Yes.

5 Q. Did you work with Natalie Martinez during
6 the processing of your three loans?

7 A. Yes.

8 Q. Do you recall any other staff members or
9 team members at Worldwide Mortgage on the processing
10 of your three loans?

11 A. On these loans, it was just Jodi and
12 Natalie.

13 Q. All right. And did they handle most of
14 the paperwork in connection with the processing of
15 these loans?

16 A. Yes.

17 Q. And you did have conversations with both
18 of these in connection with the processing of these
19 loans, didn't you?

20 A. Daily.

21 Q. Daily? Okay.

22 MR. TALLON: Could we move about three
23 pages to page AHL518? It's within the same exhibit,
24 I believe, and it's stipulated to. And if we could
25 drop to the bottom of that page, 518.

1 And if I could direct your attention --
2 it's a little small, but there's two lines that
3 begin with the word "indicated." And maybe we need
4 to zoom in on that.

5 Q. You have a better look than I do,
6 actually. But do you see the two lines indicated?

7 A. Yes.

8 Q. Okay. And the first one, it says,
9 "Indicated value by sales comparison approach,
10 \$495,000"?

11 A. Yes.

12 Q. And then, "Indicated value by sales
13 comparison approach, \$495,000"?

14 A. Yes.

15 Q. And you didn't buy any of these three
16 properties for any more than \$490,000?

17 A. Each was 490.

18 Q. So in effect, this appraisal by Heidi
19 Chavez -- you said she did all the appraisals --
20 valued this property at a price a little higher than
21 what you paid?

22 A. That's right.

23 Q. And without looking at all three of these
24 appraisals, they are -- well, your recollection is
25 that the other two appraisals were for at least

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1 \$490,000; is that correct?

2 A. They're up at the top, and so let's look
3 at those. That way, I can recall exactly. Can I go
4 to the top of the page?

5 Q. Sure.

6 A. That's great. Thank you.

7 And your question was, they're all 490 or
8 above?

9 Q. No. The other two houses that you
10 purchased were appraised at at least \$490,000; is
11 that correct?

12 A. I'd have to look at them again, but I
13 think so. One of them is the first one on here.
14 This is the subject property.

15 Q. Okay, so we can stay right there at the
16 top of the page. Do you see, towards the top of the
17 page, there's three columns? One says, "Comparable
18 Sale No. 1." Next is, "Comparable Sale No. 2," and
19 the third is, "Comparable Sale No. 3."

20 Do you see that?

21 A. Yes.

22 Q. And those three properties are 8201 Villa
23 Alegre, Northeast; the next is 7435 Hawthorne
24 Avenue, Northeast; the next is 9121 Silverwood
25 Drive, Northeast; all in Zip code 87113.

1 Do you see those?

2 A. Yes.

3 Q. And your property is also located in the
4 Zip code 87113?

5 A. Right.

6 Q. And these three properties whose names or
7 addresses I just mentioned, those are the three
8 comparables that were used to reach your appraised
9 value of \$495,000?

10 A. Appraised value 495,000, yes.

11 Q. Okay. And you are familiar with the
12 phrase "comparable sales," aren't you?

13 A. Yes.

14 Q. And just to cover all the bases, if we
15 could back up from page 518 to 516, who was this
16 appraisal prepared by?

17 A. Heidi Chavez.

18 Q. Of Williams Appraisal?

19 A. Yes.

20 Q. Could we go to 529 of that same exhibit?

21 A. (Witness complies.)

22 Q. Do you see a copy of what appears to be
23 Heidi Chavez's real estate license?

24 A. Yes.

25 MR. TALLON: Could we turn to the next

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1 page, 530 of this appraisal -- let me see if I've
2 got that right. Actually, we'd have to go to
3 Exhibit J25 to reach page 530. Okay, we've got it.
4 All right, we just had it.

5 And I believe this is stipulated to, as
6 well.

7 MR. KRAEHE: What is it?

8 MR. TALLON: I believe this is stipulated
9 to as well. This is J25 -- no, I25. I'm very
10 sorry.

11 MR. KRAEHE: Yes.

12 Q. (By Mr. Tallon) Okay. So directing your
13 attention, Ms. Prouty, to I25, if you could take a
14 few moments to look at this and see if you recognize
15 what it is.

16 A. Well, it's titled Residential Appraisal
17 Review, short form.

18 Q. And does it give the name in that top box
19 of somebody called a review appraiser?

20 A. Yes.

21 Q. What's his name?

22 A. Robert -- I don't know how to say it. I'm
23 going to butcher it, I'm sure, but Fabianes.

24 Q. Yeah, I think it's Fabianes as well. And
25 it's spelled F-A-B-I-A-N-E-S.

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1 And on the next line, Mr. Fabianes appears
2 to reside where, what town?

3 A. San Diego, the same as the lending
4 institution.

5 Q. And the lending institution is who?

6 A. Accredited Home Lenders.

7 Q. And does this seem to be an appraiser who
8 reviewed Ms. Chavez's work on behalf of Accredited
9 Home Lenders?

10 A. I don't know. I don't know what that
11 represents.

12 Q. All right. Could we go down to the bottom
13 box, called Reviewer's Summary at the bottom of the
14 page?

15 A. (Witness complies.)

16 Q. And the reviewer's recommendation is a
17 number. What's that number?

18 A. The reviewer's recommendation is 490,000.

19 Q. All right. So this gentleman in San Diego
20 reviewed Ms. Chavez's appraisal and appears to have
21 revised it or adjusted it a little bit by \$5,000; is
22 that correct?

23 A. That's how it appears, yes.

24 Q. Now, one of the points that you made with
25 Ms. Higgins was your statement to the effect that

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1 Mr. Powers told you to pay the mortgage with the
2 money you received. Do you remember saying that?

3 A. Yes.

4 Q. And do you remember when you first became
5 delinquent or I should say when you first defaulted
6 on any of those three mortgages?

7 A. It was in November of '07.

8 Q. Okay. Have you had an opportunity to look
9 at your credit report recently?

10 A. I have not pulled my credit report since
11 my bankruptcy.

12 Q. All right. Would that perhaps refresh
13 your recollection as to the date of your first
14 default?

15 A. It may.

16 MR. TALLON: May I approach, Your Honor?

17 THE COURT: Sure.

18 THE WITNESS: What is it you want me to
19 look for here?

20 Q. (By Mr. Tallon) I'd just like you to
21 review this column and then continue your review on
22 to the next page.

23 A. Okay.

24 Q. Have you had an opportunity to review it?

25 A. I looked at it briefly, yes.

1 Q. Does it refresh your recollection as to
2 when you may have first defaulted on the mortgage
3 loans that relate to these three transactions?

4 And maybe if I could take it back for a
5 minute, I'll just ask you a question: Do you
6 recall, what was the date of your first default on
7 a \$127,200 mortgage loan to Mid Century Mortgage?

8 A. Maybe I don't understand the term default,
9 but New Century was who I believe who the lender was
10 for the Vista del Rey property. And they
11 transferred it to someone else, so I don't know that
12 that ever defaulted.

13 Well, maybe I don't understand the term
14 "default," but that was paid.

15 Q. Do you remember Cameron Financial Group,
16 the lender on 6701 Glenlochy?

17 A. Yes.

18 Q. Do you recall when you first defaulted on
19 the loans with Cameron lenders?

20 A. Pretty much everything stopped being paid
21 in November of '07. So I can't justify what's in
22 there. Maybe that's when they started acknowledging
23 it.

24 Q. All right. Accredited Home Lenders was
25 one of your lenders, yes?

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1 A. With one of the Oakland Estates
2 properties, yes.

3 Q. Okay. We'll focus on two Accredited loans
4 at the same time. And you said one of them was an
5 Oakland Estates property. I'll direct your
6 attention to these two numbers --

7 A. All right.

8 Q. And two those two dates. And once you've
9 had a chance to take a look at it, I'll ask again
10 the question.

11 A. I think if you're asking about default,
12 these were --

13 MR. TALLON: Wait for my question.

14 Q. (By Mr. Tallon) Does this report, your
15 credit report, indicate that you first defaulted
16 on --

17 MS. HIGGINS: Your Honor, objection. I
18 thought that he was giving the witness for
19 recollection --

20 THE COURT: Rephrase the question.

21 Q. (By Mr. Tallon) Does this report refresh
22 your recollection as to the date of your first
23 default on the first loan given to you by Accredited
24 Home Lenders?

25 A. I wasn't ever aware that I defaulted.

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1 They were sold by Accredited to other companies, and
2 so this is my first knowledge of any default. I
3 paid the other company that they sold the loans to.

4 Q. All right. What is the date at the top of
5 this credit report?

6 MS. HIGGINS: Your Honor, objection. I
7 don't know what that is. It's not in evidence.
8 He's just using it to refresh recollection.

9 THE COURT: Okay.

10 Q. (By Mr. Tallon) So you don't remember?

11 MS. HIGGINS: Objection, Your Honor. I
12 believe the witness has said --

13 THE COURT: There's no question.

14 Q. (By Mr. Tallon) All right. In going back
15 to your bankruptcy, Ms. Prouty, I wanted to know if
16 you'd ever heard the term "strategic default."

17 A. No.

18 Q. Have you ever heard that in reference to
19 someone making a choice about --

20 MS. HIGGINS: Objection, Your Honor. I
21 believe the answer was no.

22 THE COURT: Stick to the question. Have
23 you ever heard that in reference to someone making a
24 choice about?

25 So again, I need to hear a question before

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1 I can overrule it.

2 Q. (By Mr. Tallon) A choice about which loans
3 to pay and which loans not to pay?

4 MS. HIGGINS: And Your Honor, objection,
5 based on her prior answer of not knowing what that
6 term means.

7 THE COURT: Well, no, not really. She was
8 asked if she had heard the term "strategic default."
9 She said no.

10 This is a different question. It may mean
11 the same thing, but it may mean something else to
12 her. Overruled.

13 A. I'm understanding you to ask if I've heard
14 the term strategic default in relationship to
15 something. But I've never heard the term "strategic
16 default," so I haven't heard it in relationship to
17 anything else.

18 Q. (By Mr. Tallon) Okay. But it's true that
19 you made a choice in your bankruptcy petition to
20 hang on to three properties and default on the other
21 three?

22 A. That would be accurate.

23 Q. And we talked about Tim Lesley earlier.
24 Did Mr. Lesley buy a house in Oakland Estates on the
25 same street you did?

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1 A. I think so. I actually don't know where
2 his is. I think it was on Glenlochy, but I'm not
3 100 percent sure.

4 Q. Isn't it true that Mr. Lesley's house, the
5 one that he bought, was across the street from the
6 house you bought on Glenlochy?

7 A. I really don't know.

8 Q. Do you know if Mr. Lesley is still paying
9 the mortgage on the house he bought there?

10 A. I don't know.

11 MR. TALLON: Could I have a moment, Your
12 Honor?

13 THE COURT: Sure.

14 Q. (By Mr. Tallon) Ms. Prouty, when we were
15 looking at your lease before, the one that you and
16 Mr. Barnett signed, do you recall the amount of the
17 rent that you and Mr. Barnett listed on that lease?

18 A. If I recall, it was 1,600. Can we look at
19 it again?

20 Q. Sure. Let's see if I can find it.

21 Okay, if you could look at Exhibit J16.

22 A. Thank you.

23 MR. KRAEHE: Has that one been --

24 MR. TALLON: Actually, it's another copy
25 of that lease, and it is stipulated to. And it's

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1 part of J14; is that correct?

2 MR. KRAEHE: I'm okay with it.

3 THE WITNESS: Can you go to page 2,
4 please?

5 MR. TALLON: If you could go to page 2,
6 please.

7 THE WITNESS: 1,600, yes.

8 Q. (By Mr. Tallon) All right. Now when you
9 were speaking with Ms. Higgins about one of your
10 loan applications, let me just --

11 MR. TALLON: Okay. If we could go to
12 Exhibit 96, page 492. And we need to cue the
13 government on this one.

14 THE WITNESS: Will that come up on here?

15 MR. TALLON: Yes, it will come up.

16 Q. (By Mr. Tallon) And if I could direct your
17 attention to the portion of the page that shows
18 Income, up at the top, I believe?

19 A. All right.

20 MR. TALLON: And if I could just step up
21 here, Your Honor, because my eyes are failing.

22 Q. (By Mr. Tallon) Do you see a figure for
23 gross rental income?

24 A. It says "net rental income."

25 Q. Well, the column to the left.

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1 MR. TALLON: Your Honor, if I may
2 approach?

3 THE COURT: Sure.

4 A. This one looks like net rental income
5 there. Is that gross?

6 Q. (By Mr. Tallon) It is a bad copy, but I'll
7 let your eyes be the judge.

8 A. Is that the line that you want?

9 Q. Yes.

10 A. Yes.

11 Q. It appears to read, "gross rental income"?

12 A. Okay.

13 Q. And the figure that the team at Worldwide
14 Mortgage used to prepare your application was
15 \$1,200?

16 A. It appears that way, yes.

17 Q. So they actually assigned you \$400 less
18 income than was represented by the lease that you
19 and Mr. Barnett created?

20 A. Apparently, yes.

21 Q. Now, if we could look at -- I don't know
22 what exhibit -- excuse me. It's Exhibit 23,
23 Government Exhibit 23. And the best I can tell you
24 is page 31, line 24.

25 Do you recognize what's shown in

1 Exhibit 23?

2 A. Yes.

3 Q. And what is it?

4 A. It's a Nonprosecution Agreement relating
5 to Joan Prouty.

6 Q. And the date on that agreement is?

7 A. September 22, 2009.

8 Q. And would you agree that you didn't
9 believe you had done anything wrong at the time you
10 signed this agreement?

11 A. By the time this agreement was presented,
12 I had already met with Mr. Freedman once. And he
13 had outlined where there were issues that then were
14 brought my attention were wrong. So no, I knew that
15 when I signed this agreement.

16 Q. Okay. So you felt that you signed this
17 agreement to avoid some risks that Mr. Freedman
18 thinks you might have faced?

19 A. Mr. Freedman and me.

20 MR. TALLON: Okay. Your Honor, I'd like
21 to at this time offer into evidence all of the
22 exhibits set forth in my exhibit list under
23 category G, category H, category I, category J, that
24 are that have already been stipulated to by the
25 United States.

1 There are a few exhibits within those
2 categories that are not that I would like to offer
3 at this time, those exhibits which are stipulated
4 to. And I have no further questions.

5 THE COURT: Received.

6 Redirect?

7 REDIRECT EXAMINATION

8 BY MS. HIGGINS:

9 Q. Ms. Prouty, I'm going to try to talk with
10 you without bringing any of these exhibits back up
11 because we've all looked at them.

12 On the letter signed by your father having
13 to do with the gift, did you draft that letter?

14 A. No.

15 Q. Did you ask your father to sign it?

16 A. I told him that Kevin was going to be
17 faxing him a letter. And we he had agreed to help
18 me out with the money, so I did ask that he sign it
19 so we had documentation, yes.

20 Q. And I believe you just said Mr. Powers was
21 going to be faxing the letter. Whose idea was it to
22 get this loan from your father?

23 A. Well, Mr. Powers would be the answer to
24 that question.

25 Q. Okay. And what was the purpose of getting

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1 the \$30,000 to put in your bank account?

2 A. To show that I had money available so that
3 it would appear I could pay for the mortgages.

4 Q. Essentially, that you had the ability to
5 repay the loan?

6 A. Yes.

7 Q. And I said loan, singular, because each
8 lender would only know about its loan?

9 A. Right.

10 Q. Okay. Now on the bankruptcy documents
11 that Mr. Tallon showed you, where it listed all the
12 properties that you owned, as part of filing for
13 bankruptcy, is it true that you had to list all of
14 the properties you owned on the petition?

15 A. Everything I owned.

16 Q. And although you wanted to keep three of
17 those real estate properties, did you have the
18 ability to tell the Bankruptcy Court, "I'll be
19 keeping those. You can sell the rest for my
20 creditors?"

21 A. No. I had moved out of the Sprenger
22 property, because we were doing some fixup, because
23 I figured I'd have to sell it, or it needed to be
24 ready to sell. I did not think I would end up with
25 that property, and so we moved back into the

1 townhouse at that time.

2 Q. All right. Who, to your understanding,
3 was going to make the decision about which of your
4 properties would be sold to pay your creditors?

5 A. The judge or trustee in the bankruptcy.

6 Q. And why is it, I wonder, that the three
7 properties that you kept, why were they not sold; do
8 you know?

9 A. Because they didn't have any real value.

10 Q. Is that because there was low equity in
11 them?

12 A. That's right. Excuse me. They didn't
13 have any equity value. They didn't have any money
14 that the trustee could get for payment of the other
15 things I owed.

16 Q. And that decision was made by the trustee,
17 you're telling us?

18 A. That's right.

19 Q. Why did you go into bankruptcy?

20 A. I didn't have a choice. I couldn't pay
21 for the houses on Oakland Estates. I couldn't make
22 those mortgages anymore, and that's what I had to
23 do.

24 Q. All right. Did you decide on your own to
25 go into bankruptcy? Did anybody advise you?

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1 A. My friend Dawn came over and said, "Joan,
2 get your head out of the sand. We have to go and
3 talk to some people about the predicament we've
4 gotten ourselves into."

5 Q. All right. Had you considered any
6 alternatives to going into bankruptcy?

7 A. Suicide was a reasonable option, excuse
8 me. But I did think of it a lot.

9 Q. All right. Mr. Tallon mentioned Kathy
10 Winston, Dr. Winston?

11 A. Yes.

12 Q. You all bought at least one property
13 together; did I understand that correctly?

14 A. That's right, the property at Vista del
15 Rey.

16 Q. Did Mr. Powers ever call you about another
17 property that Dr. Winston had bought?

18 A. Yes.

19 MR. TALLON: Objection, irrelevant.

20 THE COURT: Can you describe the
21 relevancy, please?

22 MR. TALLON: May we approach?

23 THE COURT: All right.

24 (At the bench:)

25 MS. HIGGINS: Your Honor, this involves

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1 another property that Dr. Winston bought and
2 apparently defaulted on immediately. Ms. Prouty was
3 in California and got a call from Mr. Powers, who
4 told her that she needed to make the mortgage
5 payments, presumably out of some of the cash back
6 she had received on her properties. She was
7 dumbfounded and did not do so. Mr. Tallon has
8 brought up Dr. Winston.

9 MR. TALLON: Your Honor, Ms. Winston,
10 Dr. Winston, wasn't mentioned on direct examination.
11 The United States attempted to offer an exhibit or
12 exhibits in relationship to Dr. Winston that were
13 objected to in pretrial proceedings. Judge Armijo
14 excluded them.

15 But it is undeniable that Joan Prouty was
16 a co-owner of this Vista del Rey property. And I
17 think it was proper to simply bring up the fact of
18 her co-ownership with Dr. Winston because it's one
19 of the properties that was involved in her defaults
20 and the bankruptcy proceedings and so forth.

21 To allow Ms. Higgins to now go into a
22 separate transaction that Dr. Winston engaged in for
23 a house was 8- or \$900,000 -- that was the property
24 or the issue that the United States attempted to
25 interject information about and was precluded from

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1 doing so by Judge Armijo -- I think would be
2 inappropriate.

3 I don't feel that I have opened the door
4 to cross-examination about an entirely new
5 transaction for which the United States probably
6 doesn't have exhibits available to go through the
7 particulars of.

8 THE COURT: You've raised a matter that
9 hasn't been raised and that's beyond the scope of
10 cross.

11 Now let's go back and talk about this one
12 thing that came out -- I don't remember if it was on
13 direct or cross -- about whether Mr. Powers had
14 asked her to make contributions or payments out of
15 this money. I don't recall it coming up on cross.

16 MR. TALLON: No, I didn't bring it up on
17 cross.

18 THE COURT: It will be sustained. Beyond
19 the scope of cross-examination.

20 MS. HIGGINS: Okay.

21 (In open court:)

22 Q. (By Ms. Higgins) Ms. Prouty, although
23 Mr. Tallon has talked about your intimate partner,
24 Gene Barnett, you are in fact legally a single
25 woman; are you not?

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1 A. That's right.

2 Q. Do you know -- well, you have said you
3 know Shaunna Ramply. Is she also single?

4 A. Yes.

5 Q. Do you know Dawn Tuschhoff?

6 A. Yes, I do.

7 Q. Is she also single?

8 A. Yes, she is.

9 Q. And was she also another client of
10 Mr. Powers?

11 A. Yes.

12 Q. Now at the time you bought the three
13 properties we've been talking about, did you intend
14 to live in any one of them as your primary residence
15 at the time you bought them in March 2006?

16 A. The ones I bought in March 2006 I never
17 intended to live in. As far as other properties
18 that he was my broker, no. I wanted to live in
19 Sprenger.

20 Q. And speaking about that, when you got the
21 refinance on Racheleigh, did you provide Mr. Powers
22 with accurate income information?

23 A. Yes, I did.

24 Q. And that was not a stated income loan, was
25 it?

Page 194

1 A. That's correct.

2 Q. And at the time you bought the three
3 properties through Mr. Powers, we'll call them the
4 three --

5 A. Okay.

6 Q. -- meaning the two on Glenturret and the
7 one on Glenlochy, did you intend to do \$240,000 in
8 repairs and renovations through K&E Construction?

9 A. No.

10 Q. Is it your testimony today that the three
11 houses in Oakland Estates were found by Mr. Powers?

12 A. Yes.

13 Q. And was he your Realtor on all three?

14 A. Yes.

15 Q. And was he your mortgage broker on all
16 three?

17 A. Yes.

18 Q. And was he the one who knew you were
19 buying three properties within roughly two weeks of
20 each other?

21 A. It was a week of one after another, and
22 yes.

23 Q. You and Mr. Tallon talked about a concept
24 that sounded like buy low, sell high. That was not
25 the exact wording, but I believe you said you were

Page 195

1 familiar with the concept of finding a house that
2 was being offered for sale at less than its probable
3 value. Did you say that?

4 A. Yes.

5 Q. At the time you bought these homes in
6 March 2006, were you familiar with the idea of
7 finding such a house that was being offered for sale
8 at under its probable value?

9 A. Yes.

10 Q. But were you also aware of the concept of
11 buying it at a higher price so that you could get
12 money back at closing?

13 MR. TALLON: Objection. Mischaracterizes
14 the concept that Ms. Higgins thinks I was relying
15 on.

16 THE COURT: Overruled.

17 THE WITNESS: Am I supposed to answer
18 that?

19 MS. HIGGINS: Yes, you are.

20 A. Yes, I think, is the answer.

21 Q. (By Ms. Higgins) All right. And where did
22 that idea come from to you?

23 A. I originally heard about the idea when
24 Shaunna and Gene were working on buying these kinds
25 of homes for flippers, to buy, fix up and then

1 resell.

2 Q. All right. And when you talked with
3 Mr. Powers, did he also espouse the idea of buying
4 low and building in an amount that would come back
5 to the buyer after closing?

6 A. Yes.

7 Q. I believe you told Mr. Tallon that you
8 never discussed different kinds of loan products
9 with Mr. Powers; is that right?

10 A. That's right.

11 Q. Did you ever discuss with him why you
12 would -- well, whether a full doc loan was possible
13 for you to buy these three homes?

14 A. I knew that that wasn't possible, and I
15 knew there were options of these stated loans. And
16 so we didn't really have that conversation. It was
17 just what was going to happen.

18 Q. All right. Why was a full doc loan not
19 possible for you?

20 A. Because I could not support payment. I
21 wouldn't have enough income to support payment.

22 Q. Well, why did you agree to having the
23 boxes for primary residence checked? Why did these
24 have to be bought as primary residences?

25 A. To get a lower mortgage -- or interest

Page 197

1 rate. And that's how I understood that --

2 Q. All right.

3 A. -- even though they weren't very low.

4 Q. Did Mr. Powers tell you that you could get
5 a lower interest rate if you bought as a primary
6 residence?

7 A. Right.

8 Q. You and Mr. Tallon also talked about the
9 lease agreement having to do with Mr. Barnett --

10 A. Yes.

11 Q. -- renting from you?

12 Who prepared that lease agreement?

13 A. Mr. Powers did.

14 Q. Why is that lease agreement showing up in
15 lenders' records and other places?

16 A. As I recall, it was to show that I had
17 additional income coming in and also that the
18 Racheleigh property would be rented.

19 Q. So that Racheleigh could not be seen as
20 your primary residence; is that correct?

21 A. Right. But I think, more than anything,
22 to show that there was income coming in.

23 Q. All right. In buying three houses at
24 once, whose advice did you rely on for that?

25 A. Kevin Powers.

Page 198

1 Q. Do you know what a silent partner is?

2 A. Not really. I mean I think I have a
3 layman's idea of what it is. Someone who's there
4 with money, and that's about it.

5 Q. Was Mr. Barnett there with money?

6 A. No.

7 Q. In fact --

8 A. He was also poor.

9 Q. Okay. And actually, whose name was on the
10 mortgages?

11 A. All of them have my name alone on them.

12 Q. Mr. Tallon talked with you about letters
13 in his exhibits. They are also I believe in the
14 lenders' exhibits.

15 The one where you talked about earning
16 11,000 a month and another one where you talked
17 about being able to make payments, who typed these
18 letters?

19 A. I didn't type them. I think they were
20 typed by Natalie or Jodi.

21 Q. All right. And the purpose of these
22 letters was what?

23 A. To represent to the lenders that I could
24 make the mortgage repayments.

25 Q. And there was some reference, I believe,

Page 199

1 to Gene Barnett possibly paying rent to you.

2 At any point, did he pay -- or not at any
3 point. In March of '06, was he paying you any rent
4 anywhere?

5 A. No.

6 Q. Did Mr. Powers know that you were buying
7 these three properties as investment properties?

8 A. Yes.

9 Q. Did Mr. Powers know that you were not
10 planning on making renovations on these properties,
11 at least not to the tune of 240,000?

12 A. Yes.

13 MR. TALLON: Objection. Assumes facts not
14 in evidence and lack of foundation.

15 THE COURT: Well, I'll overrule on those
16 two grounds.

17 Q. (By Ms. Higgins) I believe you said yes?

18 A. Right. We talked about what needed to be
19 done, and it certainly wasn't at that much of a
20 cost.

21 Q. And Mr. Tallon showed you a page from a
22 Web page called salary.com?

23 A. Uh-huh.

24 Q. Was that ever pulled up for you while you
25 were giving income information to Mr. Powers or

Page 200

1 anyone at his office?

2 A. I never saw that. He said that he was
3 using a computer program to do the cost -- or the
4 salary information.

5 Q. Okay. But you were not making the
6 \$101,164 a year?

7 A. No.

8 MS. HIGGINS: Your Honor, may I have a
9 moment, please?

10 THE COURT: Sure.

11 MS. HIGGINS: That's all the questions we
12 have, Your Honor.

13 THE COURT: Ms. Prouty, you're excused.

14 We're going to take a 15-minute break. Do
15 not discuss the case among yourselves or with others
16 or in anyone's presence. If anyone tries to talk to
17 you about the case, advise me immediately. Do not
18 read, watch or listen to radio, television or news
19 reports of the trial or do research on your own.
20 Keep an open mind until all the evidence has been
21 received and you've heard the closing arguments and
22 instructions.

23 Court is in recess for 15 minutes.

24 (Court in recess from 2:15 to 2:31.)

25 (Whereupon the jury entered the

Page 201

1 courtroom.)

2 THE COURT: Please be seated.

3 MR. KRAEHE: Your Honor, the United States
4 calls Dawn Tuschhoff.

5 THE COURT: Good afternoon. Would you
6 please remain there for just a moment and state and
7 spell your first name and last name for me and the
8 jury and for the court reporter?

9 THE WITNESS: My name is Dawn Tuschhoff.

10 The first name is D-A-W-N. The last name is
11 T-U-S-C-H-H-O-F-F.

12 THE COURT: Please raise your right hand.

13 DAWN TUSCHHOFF,

14 having been first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. KRAEHE:

17 Q. Good afternoon, ma'am. Where do you
18 currently reside?

19 A. Here in Albuquerque, up in the Northeast
20 Heights.

21 Q. How long have you resided in Albuquerque?

22 A. Since I was four.

23 Q. Did you purchase a single-family dwelling
24 at 11801 Eagle Rock Road in April of 2007?

25 A. Yes.

Page 202

1 Q. Who was your real estate agent for
2 purchase of that property?

3 A. Kevin Powers.

4 Q. What caused you to want to purchase the
5 property on Eagle Rock?

6 A. Real estate investment.

7 Q. Was it your intent to purchase that
8 property as a primary residence?

9 A. No.

10 Q. Was that property intended as an
11 investment?

12 A. Yes.

13 Q. Did Kevin Powers know it was your intent
14 to purchase that property for investment purpose?

15 A. Yes.

16 Q. How did he know that?

17 A. We had discussed it in his office several
18 times.

19 Q. Did you have a plan as to how you would
20 make money on that property as an investment?

21 A. On that particular property, we were going
22 to renovate it and then sell it for a profit. We
23 were going to remodel the home.

24 Q. And who came up with that plan?

25 A. Kevin.

Page 203

1 Q. Who found the property for you?

2 A. Mr. Powers.

3 Q. Did you have anything to do with locating
4 that property?

5 A. I did not.

6 Q. Do you recall who was selling the property
7 on Eagle Rock?

8 A. I think Kiva Assets was the owner.

9 Q. And do you know for how much Kiva Assets
10 originally listed the property?

11 A. I do not.

12 Q. Have you since learned about how much they
13 had listed it for?

14 A. No.

15 Q. Did you ultimately enter into a contract
16 for the purchase of Eagle Rock?

17 A. Yes.

18 Q. Behind you are a bunch of binders that
19 contain government exhibits. And I'd like you to
20 pull off the binder that contains Government
21 Exhibit 139. That has already been entered into
22 evidence, and I'd like you to turn to page 174 of
23 that.

24 And by the way, ma'am, just for the
25 record. How old are you?

Page 204

1 A. Forty-eight.

2 Q. And are you married?

3 A. No.

4 Q. Have you ever been married?

5 A. No.

6 Q. Are you there at page 174?

7 A. Yes.

8 Q. Okay. And this is kind of -- it's not the
9 best copy in world. But can you tell us what that
10 document is?

11 A. It's a purchase agreement.

12 Q. Is that the purchase agreement for the
13 property at Eagle Rock?

14 A. Yes.

15 Q. And who is listed as the purchaser on that
16 agreement?

17 A. Myself.

18 Q. And who is listed as the seller?

19 A. It's hard to say, but it looks like Kiva
20 Assets.

21 Q. And what is the purchase amount?

22 A. I don't see it on this page.

23 Q. All right. And --

24 A. Oh. Is that it, 760?

25 Q. \$760,000?

Page 205

1 A. Yes.

2 Q. And could you flip around through the
3 pages until you find the page that contains all the
4 signatures?

5 A. I found it.

6 Q. And is your signature on that contract?

7 A. Yes, it is.

8 Q. And on what day did you sign that
9 contract?

10 A. March 2nd.

11 Q. And does that page also indicate who your
12 real estate agent is in connection with the purchase
13 of that property?

14 A. Yes, Kevin Powers.

15 Q. Who negotiated this contract on your
16 behalf?

17 A. Kevin Powers.

18 Q. Did anyone else negotiate that contract on
19 your behalf?

20 A. No.

21 Q. Was Kevin Powers your real estate advisor
22 for purposes of this particular transaction?

23 A. Yes.

24 Q. Was anyone else your real estate advisor
25 for purposes of this particular transaction?

Page 206

1 A. No.

2 Q. Did you apply for a mortgage loan in
3 connection with the purchase of Eagle Rock?

4 A. Yes.

5 Q. Who was your mortgage broker?

6 A. Kevin Powers.

7 Q. I would like you now to turn to page 254.

8 A. Okay.

9 Q. And are you there?

10 A. Yes.

11 Q. And can you tell the jury what that is?

12 A. Uniform Residential Loan Application.

13 Q. Is that a loan application that was
14 submitted on your behalf by Worldwide Mortgage?

15 A. Yes. Or actually, was this Powers
16 Mortgage?

17 Q. It was Powers Mortgage, then?

18 A. I think it was Powers Mortgage.

19 Q. Can you look at the last page?

20 A. I'm not seeing it.

21 Q. Look at page 259, please.

22 A. Okay.

23 Q. Does it say there?

24 A. It's all very blurry.

25 Q. And I've blown it up on the screen for

Page 207

1 you.

2 A. Powers Mortgage.

3 Q. Okay. And on what date did you sign that
4 application?

5 A. April 9, 2007.

6 Q. Do you recall that as being the date on
7 which you closed on this property?

8 A. Yes.

9 Q. And if you could flip back to the first
10 page of that application, please?

11 A. (Witness complies.)

12 Q. And tell me the amount that you were
13 applying for, as far as the loan.

14 A. It's very blurry.

15 Q. Does that look like \$608,000 to you?

16 A. Either 608 or 808, with an 8 percent
17 interest. It's hard to read.

18 Q. Okay. And if you could look at -- it's
19 kind of right there at the bottom of the screen. On
20 the right-hand side, there are three choices there
21 as to what purpose you're buying the property for,
22 and one of the boxes is checked.

23 Can you tell the jury what box is checked?

24 A. Again, I can't read it. But it was
25 primary residence when we were purchasing the home.

Page 208

1 Q. And are the other choices there secondary
2 residence and investment?

3 A. Yes.

4 Q. And again, what was the box that was
5 checked?

6 A. Primary residence.

7 Q. Okay. Now, if you could turn to the
8 second page, please, and I'll blow up the part for
9 you that addresses income.

10 Can you tell what net income was stated on
11 your behalf by Powers Mortgage on that application?

12 A. I can't make out the numbers.

13 MR. KRAEHE: Can you blow that up so we
14 can get better clarity on that?

15 Q. (By Mr. Kraehe) Is that any better?

16 A. Is that 11,000?

17 Q. At the bottom there, where it says Total?

18 A. I can't read that.

19 MR. KRAEHE: Can you blow it up again,
20 please?

21 THE COURT: Is the paper any clearer?

22 Q. (By Mr. Kraehe) I don't want you to guess.
23 Let me have you look at page 335. Hopefully this
24 one will be a little clearer.

25 Are you looking at page 335?

Page 209

1 A. Yes.

2 Q. And is that the first page of another loan
3 application?

4 A. Yes.

5 Q. Is that the loan application for the
6 second loan that you applied for on this property?

7 A. Yes.

8 Q. And what's the amount of the loan that you
9 are applying for here?

10 A. 152,000.

11 Q. Okay. And what's the interest rate that
12 you're applying for?

13 A. 9.276.

14 Q. All right. And what did you mark down as
15 the purpose for which you were purchasing this
16 property?

17 A. Primary care residence.

18 Q. And just to be clear, did you mark that
19 down or did someone mark that for you?

20 A. I don't recall.

21 Q. Okay. And then if you could look at the
22 second page of your income part, can you tell us
23 what income was stated on your behalf on that loan
24 application?

25 Is that not clear enough for you?

Page 210

1 A. It looks like either 11 or 14.

2 Q. All right. I'm going to try to find a
3 better copy. I apologize.

4 Can you please go to Government Exhibit
5 No. 62, page 294?

6 A. (Witness complies.)

7 Q. What's the loan amount on that first loan
8 application?

9 A. 608,000.

10 Q. At what percent?

11 A. 8 percent.

12 Q. Okay. And you can see that clearly now?

13 A. Yes.

14 Q. All right. And again, what was the
15 purpose for which you purchased it, as indicated on
16 that application on your behalf?

17 A. Primary residence.

18 Q. All right, let's go to the second page.

19 Look at the income information.

20 What's the income information there?

21 What's the net income stated for you?

22 A. 16,500.

23 Q. Okay. And you can see that clearly?

24 A. Yes.

25 Q. All right. And turn to the last page, and

Page 211

1 please let me know what the date that you signed
2 that is, so we can be certain about that, too?

3 A. It was April 7, 2007.

4 Q. Okay. And that again is the date of
5 closing?

6 A. Yes.

7 Q. Now flip to page 539, please.

8 A. In this same binder?

9 Q. No. That would be Government Exhibit 63.
10 It may be in the same binder. Page 539.

11 A. Okay.

12 Q. Is that the application for the second
13 loan?

14 A. Yes.

15 Q. And just so that we're absolutely certain
16 about this, can you read that clearly?

17 A. Yes.

18 Q. Can you read the loan amount?

19 A. 152,000.

20 Q. And the interest rate on that?

21 A. 9.375.

22 Q. And how is the box checked as for purpose?

23 It's there on the first page. If you look at the
24 screen, it's pointed out for you.

25 A. Primary residence.

Page 212

1 Q. Okay. And if you could flip to the second
2 page and tell me what income is stated on your
3 behalf.

4 A. 16,500.

5 Q. Okay. If could you turn to the last page,
6 and tell me if you signed that application.

7 A. Yes.

8 Q. And on what date?

9 A. April 7, 2007.

10 Q. Okay. Now, were these the only two loan
11 applications that you signed in connection with your
12 purchase of the property at Eagle Rock?

13 A. Yes.

14 Q. All right. Were these loan applications
15 presented to you for signature by anyone?

16 A. Yes.

17 Q. Who?

18 A. Mr. Powers, I'm sure.

19 Q. Okay. And was your income at the time
20 that you signed these applications \$16,500 a month?

21 A. I don't know what the monthly was, but,
22 that's a little too high. It would have been closer
23 to 2,000 a month.

24 Q. You made about 2,000 a month back then?

25 A. 2,000, 3,000 a month.

Page 213

1 Q. All right. What do you do for a living?

2 A. I'm a Registered Nurse.

3 Q. Okay. And how long have you been a
4 Registered Nurse?

5 A. Since 1986, so for 20-some years.

6 Q. And where were you working in 2006?

7 A. Lovelace.

8 Q. And did you have any other sources of
9 income at that time?

10 A. No.

11 Q. The only source of income you had was as a
12 Registered Nurse, working for Lovelace?

13 A. Yes.

14 Q. And what was your true income at that
15 time, your true monthly income?

16 A. Around 60,000.

17 Q. 60,000 a year?

18 A. Uh-huh.

19 Q. So your net income before taxes on a
20 monthly basis would have been no more than \$5,000 a
21 month?

22 A. Correct.

23 Q. Did Mr. Powers know that?

24 A. Yes.

25 Q. How do you know he knew that?

Page 214

1 A. I told him my income when we filled out
2 forms, loan applications.

3 Q. Can you tell me why you signed the loan
4 application, knowing that your income was not
5 properly stated?

6 A. I didn't read my income.

7 Q. You didn't see it on there?

8 A. No.

9 Q. And why did you sign the loan application,
10 even though the primary residence box was checked?

11 A. I was told that we could purchase the home
12 as a primary residence. We just have to live in the
13 house for 24 hours, possibly have a pizza party.
14 And then you can decide you don't like it, and it's
15 not fraud.

16 Q. Okay. And who told you that?

17 A. Mr. Powers.

18 Q. In signing these loan applications, did
19 you think you were doing anything wrong or illegal?

20 A. No.

21 Q. Why not?

22 A. I trusted what Mr. Powers was telling me.

23 Q. Now, did you have any knowledge as to what
24 your mortgage payments were going to be on this
25 house that you bought in April of 2007 for \$760,000?

Page 215

1 A. Not until I got to closing and they showed
2 me.

3 Q. And about how much was that? What were
4 the mortgage payments?

5 A. I don't recall. It was close to 600,000 a
6 month.

7 Q. \$6,000 a month?

8 A. Yeah, 6,000. Yeah, that makes more sense.

9 Q. And given that your monthly income before
10 taxes was only \$5,000 a month, was there any way you
11 could pay that mortgage every month?

12 A. No.

13 Q. So did you have a plan as to how you were
14 going to pay that mortgage?

15 A. Yes.

16 Q. And what was that plan?

17 A. We obtained money back from closing. And
18 the money was to be used to renovate the home and to
19 pay the mortgage.

20 Q. All right. And who came up with this
21 plan?

22 A. Mr. Powers.

23 Q. All right. And did he explain this plan
24 to you before the closing?

25 A. Yes.

Page 216

1 Q. Did you have any expectation as to how
2 much money you were going to be getting back at
3 closing?

4 A. Closer to closing, yes. He e-mailed me
5 that I would be getting around 210,000.

6 Q. Okay. And you said part of that was going
7 to go for renovations and part was going to go to
8 pay the mortgage?

9 A. Correct.

10 Q. How much was going to be for renovations,
11 and what part was going to be for mortgage payments?

12 A. 100,000 was set aside for renovations.

13 Q. And then the rest?

14 A. And the rest was set aside for mortgage
15 payments.

16 Q. Okay. Now, I'd like you to take look
17 at -- go back to Government Exhibit 139, please?
18 And I really hope it's a clear copy.

19 Could you turn to page 76?

20 A. (Witness complies.)

21 Q. All right. Do you know what that is?

22 A. It's the closing papers.

23 Q. Have you seen that before?

24 A. Yes.

25 Q. And that's a HUD-1 settlement statement,

Page 217

1 right?

2 A. And yes.

3 Q. That's for the property on Eagle Rock that
4 you purchased?

5 A. Correct.

6 Q. Could you turn to the second page of that,
7 please?

8 A. Uh-huh.

9 Q. Take a look down towards the bottom. I
10 think it's on line 1305. There's a line item
11 referencing K&E Construction?

12 A. Yes.

13 Q. And what does it say?

14 A. "Renovations, K&E Construction, 210,000."

15 Q. Okay. Is this something you took note of
16 at closing?

17 A. I was aware of it.

18 Q. Okay. And was it your understanding that
19 was how you were going to get your money back after
20 closing?

21 A. Yes.

22 Q. All right. And when did you become aware
23 that that's how you were going to get your money
24 back after closing?

25 A. In a discussion I had with Joan Prouty.

Page 218

1 Q. Okay. And did you in fact get some money
2 back after closing from K&E Construction?

3 A. It was a cashier's check that Kevin had
4 made out from the bank. I don't recall it saying
5 K&E. It was just a cashier's check from the bank.

6 Q. Okay. And who did you get that check
7 from?

8 A. From Kevin's staff, Mr. Powers' staff.

9 Q. Now, you said that you were going to do
10 some renovations to the property at Eagle Rock?

11 A. Yes.

12 Q. And did the property at Eagle Rock need
13 some renovations?

14 A. It could have been lived in the way it
15 was, but we wanted to expand it.

16 Q. Okay. And you set aside \$100,000 for that
17 purpose?

18 A. Yes.

19 Q. Were you planning on doing any renovations
20 that would have required more than 100,000?

21 A. The plan was not to. It was to use just
22 what we had.

23 Q. Which was no more than 100,000?

24 A. Correct.

25 Q. And tell me, what did you do with the

Page 219

1 money once you got it from Kevin Powers?

2 A. I cashed the check and put it into an
3 account at New Mexico Federal Educators. I withdrew
4 5,000 of that, and then I put some of the money into
5 a money market account that I had.

6 Q. How much money did you put into a money
7 market account?

8 A. I think 105,000.

9 Q. Okay. And was that account intended for
10 the mortgage payments?

11 A. Yes.

12 Q. Okay. And then what did you do with the
13 other 105 or 110 or whatever it was, 100?

14 A. Kevin asked that we have a joint account
15 so that we could buddy up on this property and he
16 would have access to the money to make it easier to
17 do the renovations. And so I opened up a joint
18 account.

19 Q. Okay. And is that where you put that
20 other \$100,000?

21 A. Yes.

22 Q. All right. And was that also a Federal
23 Educators Credit Union account?

24 A. Yes.

25 Q. And did Mr. Powers have access to that

Page 220

1 account?

2 A. Yes.

3 Q. And when you say he wanted to buddy up
4 with you on the project, what exactly did that mean?

5 A. He wanted to partner up with me. And I
6 would purchase the home, and he would help me with
7 the renovations. And then we would sell it and
8 split the profit.

9 Q. Did he ever help you with the renovations?

10 A. We never did any renovations.

11 Q. Turn to page 76, please.

12 A. (Witness complies.)

13 Q. What is that?

14 A. The HUD.

15 Q. Oh, is that the HUD? I'm sorry, page 91.

16 A. (Witness complies.)

17 Q. What is that?

18 A. It's a K&E Construction invoice.

19 Q. All right. And what's the date on it?

20 A. March 5, 2007.

21 Q. Okay. And does it reference the property?

22 A. Yes, 1101 Eagle Rock.

23 Q. All right. And have you ever seen that
24 before?

25 A. Not until Mary Higgins showed it to me.

Page 221

1 Q. Okay. So you didn't see that at the
2 closing or any time near the closing?

3 A. No.

4 Q. Just so we're clear on this, did you ever
5 intend to have K&E Construction do any of those
6 renovations that are mentioned on that invoice?

7 A. No.

8 Q. Okay. And you didn't intend to have
9 anyone do any renovations in the amount of \$210,000
10 to the property on Eagle Rock?

11 A. No.

12 Q. And I think you just testified that no
13 renovations were ever done on the property on Eagle
14 Rock.

15 A. No, they were not.

16 Q. Did Mr. Powers ever take any money out of
17 the joint account in which you placed the \$100,000?

18 A. Yes, he did.

19 Q. What amount did he take out?

20 A. He took out some money to purchase another
21 home.

22 Q. Do you know how much that was?

23 A. Around 60,000.

24 Q. Okay. And did he ever take any money out
25 to do any renovations?

Page 222

1 A. No.

2 Q. Did he pay that money back that he took
3 out?

4 A. Yes.

5 Q. What did you do with the cash that you
6 took out at closing ultimately?

7 A. I used the money to pay the mortgage
8 payments, and I had given 5,000 of it to Kip Powers.

9 Q. All right. And who's Kip Powers?

10 A. Kevin Powers' brother.

11 Q. And why did you give \$5,000 to him?

12 A. He was going to help me with the
13 demolition of the house and help me with the
14 property.

15 Q. Were you going to demolish the house?

16 A. At one point, we thought about demolishing
17 it and building a brand new home.

18 Q. Did you ever do that?

19 A. No.

20 Q. And did Kip Powers ever do anything to
21 earn 5,000 you gave him?

22 A. He took down some light fixtures and took
23 out the appliances.

24 Q. Okay. Would that be the extent of
25 anything he did to the house?

Page 223

1 A. Yes.

2 Q. Did you rent the house out during the time
3 that you owned it?

4 A. No.

5 Q. Did you do anything at all with the house
6 during the time that you owned it?

7 A. Some friends liked the tile that was in
8 the kitchen. So they removed all the tile that was
9 in the kitchen on the countertops, and a few light
10 fixtures were sold.

11 Q. Could you flip now to page 222?

12 A. (Witness complies.)

13 Q. Is that the note that you signed in
14 connection with the loan on that property?

15 A. Yes.

16 Q. Okay. And who is the lender?

17 A. Suntrust Mortgage.

18 Q. All right. What was the amount of that
19 note?

20 A. 608,000.

21 Q. And the interest rate again?

22 A. 8 percent.

23 Q. Okay. And just flip to the second page,
24 and let me know when you signed that.

25 A. There is no date.

Page 224

1 Q. Okay. It might say actually on the top of
2 the first page, that I recall.

3 A. April 9, 2007.

4 Q. Okay. And can you flip to page 304?

5 A. (Witness complies.)

6 Q. And is that the second note?

7 A. Yes.

8 Q. And what's the amount of that note?

9 A. 152,000.

10 Q. And the interest rate?

11 A. 9.375.

12 Q. Did you also sign that on April 9, 2007?

13 A. Yes.

14 Q. Okay. And by signing those notes that we
15 just looked at, were you promising to pay back that
16 760,000 to Suntrust Mortgage?

17 A. Yes.

18 Q. So you were on the hook for this property?

19 A. Yes.

20 Q. Was anyone else on the hook for it?

21 A. No.

22 Q. Can you take a look at Exhibit 155? And I
23 think that's going to be in another binder.

24 Can you flip to page 80 of that, please?

25 A. (Witness complies.)

Page 225

1 Q. What is that?

2 A. This is a statement from New Mexico
3 Federal Educators.

4 Q. Okay. Is that a copy of the check, or a
5 cashier's check, rather?

6 A. No. It's a statement, a bank statement.

7 Q. Okay. What's the amount on it?

8 A. (No audible response.)

9 Q. Are you looking at the right page, 155,
10 page 80?

11 A. Sorry.

12 Q. Is it not there?

13 A. I don't see it.

14 Q. Take a look at the screen. Do you
15 recognize that?

16 A. This is a cashier's check for 210,000.

17 Q. And you got that from whom?

18 A. Kevin Powers.

19 Q. And again, that's the money you used to
20 make mortgage payments on the property at Eagle
21 Rock?

22 A. Correct.

23 Q. How long did that money last, as far as
24 making mortgage payments with?

25 A. Until January of the following year.

Page 226

1 Q. January of 2008?

2 A. Correct.

3 Q. And did you run out of money to pay the
4 mortgage on Eagle Rock?

5 A. No. I was asked to not use any more of
6 the money.

7 Q. Okay. Who asked you not to use that?

8 A. The FBI.

9 Q. All right. And what happened to the
10 property at Eagle Rock?

11 A. It went into short sale.

12 Q. Do you know how much it sold for?

13 A. I really don't know. It was 270-some
14 thousand.

15 Q. And so that's about \$500,000 less than
16 what you bought it for?

17 A. Yes.

18 Q. And do you know who ate the difference?

19 A. Suntrust.

20 Q. At some point, were you visited by the
21 FBI?

22 A. Yes, I received a phone call.

23 Q. All right. And did you meet with them,
24 with the agents?

25 A. Yes.

Page 227

1 Q. And were they polite, courteous and
2 professional?

3 A. Yes.

4 Q. Did they ever threaten you or mistreat you
5 in any?

6 A. No.

7 Q. Did you voluntarily answer their
8 questions.

9 A. Yes.

10 Q. Were you truthful in the answers you gave
11 them?

12 A. Yes.

13 Q. How many times did you meet with them?

14 A. Three or four times.

15 Q. At some point, did you receive a
16 nonprosecution agreement?

17 A. Yes.

18 Q. How many times before you received the
19 nonprosecution agreement did you meet with and talk
20 to the FBI?

21 A. Three or four times.

22 Q. What is Dawn's early light?

23 A. My e-mail address.

24 Q. Was that ever a business?

25 A. No.

Page 228

1 Q. Was that ever anything that earned you any
2 income?

3 A. No.

4 Q. Did you trust Kevin Powers when you
5 entered into this real estate transaction?

6 A. Yes.

7 Q. Okay. Did you rely on his professional
8 advice?

9 A. Yes.

10 Q. Did you rely on his expertise and
11 experience as a real estate agent/mortgage broker?

12 A. Yes.

13 Q. Did you trust him to act in your best
14 interests?

15 A. Yes.

16 Q. Did you believe he had your best interests
17 at heart?

18 A. At the time, yes.

19 Q. Did you believe that you were doing
20 anything wrong when you signed the loan
21 applications?

22 A. No.

23 Q. Okay. Did you believe you were doing
24 anything wrong at all when you engaged in this
25 transaction on the advice of Mr. Powers?

Page 229

1 A. No.

2 Q. Do you believe now that Mr. Powers had
3 your best interests at heart?

4 A. No.

5 Q. Do you regret having placed your trust in
6 him?

7 A. Yes.

8 Q. Why is that?

9 A. It has shattered my life.

10 Q. In what way?

11 A. I've had to file bankruptcy. I've lost
12 the trust of my family and friends.

13 (Discussion off the record.)

14 Q. (By Mr. Kraehe) I just want you to look at
15 one more thing.

16 A. Sure.

17 Q. Take a look at Government Exhibit 62,
18 page 294. We'll pull it up for you.

19 A. Okay.

20 Q. And what we're showing for you here is
21 part of that -- that's the first the first loan
22 application?

23 A. Yes.

24 Q. Okay. And there is a -- given there. I
25 think it's on the address line.

Page 230

1 A. It says, "Dawn's early light."

2 Q. Did you see that at all when you signed
3 that application?

4 A. No.

5 Q. Why didn't you read the application when
6 it was presented to you for signature?

7 A. Kevin went through and explained things to
8 me and told me, "Sign here, sign here." And I
9 thought he was explaining everything thoroughly to
10 me, and I trusted him.

11 MR. KRAEHE: I pass the witness.

12 THE COURT: You may inquire.

13 CROSS-EXAMINATION

14 BY MR. TALLON:

15 Q. Good afternoon, Ms. Tuschhoff.

16 A. Hello.

17 Q. Are you composed enough to continue? Are
18 you okay?

19 A. Yeah. Fine thank you.

20 Q. Ms. Tuschhoff, when the FBI first
21 contacted you in January of 2008, were you current
22 on your mortgage at the Eagle Rock property?

23 A. Yes.

24 Q. And it was after you were contacted by the
25 FBI that they told you that you should not use the

Page 231

1 money you had to pay the mortgage; isn't that
2 correct?

3 A. Correct.

4 Q. And because they told you not to use the
5 money to pay the mortgage, you defaulted on the loan
6 with Suntrust, yes?

7 A. Correct.

8 Q. And after that, the property went into
9 foreclosure?

10 A. It went into a short sale.

11 Q. It went into a short sale, and it was
12 eventually sold for a very low price?

13 A. Yes.

14 Q. And would you agree that the Eagle Rock
15 property is a very unique property?

16 A. Yes.

17 Q. It was an older home out in North
18 Albuquerque Acres?

19 A. Yes.

20 Q. Did you learn from any source that the
21 land that that property sat on was very, very
22 valuable?

23 A. No.

24 Q. You just didn't know?

25 A. I did not know that, no.

Page 232

1 Q. Would you be surprised if a person
2 estimated the land that the property was sitting on
3 at \$300,000?

4 A. Yes.

5 Q. All right. Now, you were talking about
6 the fact that you had made some changes in your
7 intentions about that property.

8 Which did you intend to do first? Did you
9 intend to renovate the property, or did you intend
10 to demolish the property?

11 A. At first, we talked about demolishing the
12 property and rebuilding.

13 And then Mr. Powers had spoken with
14 somebody who was familiar with the home who thought
15 that a renovation would be nice for the house, would
16 work just as well as it demolishing it.

17 Q. Okay. And from the outset, you were
18 comfortable with the idea of buddying up with
19 Mr. Powers to do something positive with this
20 property; isn't that correct?

21 A. Yes.

22 Q. And whose thought was it to demolish the
23 property?

24 A. Mr. Powers.

25 Q. And who consulted with somebody else who

Page 233

1 recommended an alternative? That is, renovation.

2 A. Mr. Powers.

3 Q. And who was the person that Mr. Powers
4 consulted with concerning the alternative of
5 renovating the house?

6 A. I don't know who that was.

7 Q. Did you ever obtain or did Mr. Powers ever
8 obtain on your behalf architectural plans --

9 A. Yes.

10 Q. -- for renovations to the Eagle Rock
11 property?

12 A. Yes.

13 Q. Do you remember the name Eric Spurlock?

14 A. Yes.

15 Q. And do you remember Mr. Spurlock to be an
16 architect?

17 A. I never met him but I heard the name.

18 Q. And there were in fact blueprints
19 developed for renovation of the Eagle Rock house;
20 isn't that correct?

21 A. Correct.

22 Q. And the only money that Mr. Powers ever
23 spent from that joint account was approximately
24 \$5,400, which was paid to Mr. Spurlock for the
25 architectural plans for the renovations; isn't that

Page 234

1 correct?

2 A. No.

3 Q. What is incorrect about what I said?

4 A. He used the money for blueprints. He also
5 borrowed money out of that account to purchase
6 another home, but then he put the money back.

7 Q. All right. So the one expenditure he made
8 was for the blueprints that related to
9 Mr. Spurlock's work; isn't that right?

10 A. Correct.

11 Q. And would \$5,400 be approximately correct?

12 A. I don't recall the price.

13 Q. But if someone looked at your bank
14 statements, which will be in evidence, they could
15 check, couldn't they?

16 A. Yes.

17 Q. Now, the second expenditure, which was in
18 fact a short-term loan, wasn't it, the other
19 expenditure?

20 A. Yes.

21 Q. That occurred in about November of 2007;
22 isn't that correct?

23 A. Yes.

24 Q. And in November of 2007, bank records
25 would show that Mr. Powers borrowed -- I think it

Page 235

1 was about \$60,000?

2 A. Something like that, yes.

3 Q. From your joint account?

4 A. Yes.

5 Q. Mr. Powers was a signatory on that
6 account?

7 A. Yes.

8 Q. Mr. Powers borrowed that money with your
9 express permission; isn't that correct?

10 A. Yes.

11 Q. And wouldn't the bank records show that
12 approximately two days after he borrowed the money
13 from, you he paid you back?

14 A. Yes.

15 Q. And wouldn't those bank records show that
16 when he paid you back two days later, he actually
17 gave you \$2,000 more than he borrowed?

18 A. Yes.

19 Q. Now, when Mr. Powers made those efforts to
20 make inquiries about the alternatives to demolition
21 and renovation, did you think he had your best
22 interests at heart?

23 A. Yes.

24 Q. And in fact, he was a partner with you in
25 this venture, in a sense?

Page 236

1 A. Yes.

2 Q. And did you trust him in respect to that?

3 A. Yes.

4 Q. Did Mr. Powers ever take any money from
5 you?

6 A. No.

7 Q. Now, in connection with your discussion
8 about possibly demolishing the house, you mentioned
9 that you paid \$5,000 -- round number, I suppose --
10 to Kip Powers to do some renovation work, to do some
11 demolition-related work to the house?

12 A. Yes.

13 Q. And who was the person who made the
14 decision to sell the light fixtures?

15 A. Me.

16 Q. And who was the person who allowed her
17 friends to remove tile from the countertops?

18 A. That would have been me.

19 Q. And did those two actions make the house,
20 say, less habitable or less marketable?

21 A. Yes.

22 Q. Did you do those two things because you
23 were anticipating demolishing the house?

24 A. I was anticipating remodeling the house.

25 Q. And when you remodeled the house, you

Page 237

1 weren't expecting to need those light fixtures or to
2 need that tile anymore?

3 A. No. I was told that we would have a
4 complete new light package and that the kitchen
5 would be torn apart. I asked Kevin's permission
6 before I had my friends take the tile down.

7 Q. All right. And you asked his permission
8 because the two of you were partners in this
9 venture?

10 A. Yes.

11 Q. But at the time those things were done,
12 the fixtures were taken out the tile was sold and so
13 forth, at that point, had you and Mr. Powers made
14 the decision together to go ahead with renovations?

15 A. Yes.

16 Q. And in that connection or in that regard,
17 you know, did Mr. Powers take the blueprints that
18 Mr. Spurlock had developed and put them out for
19 bids?

20 A. Yes.

21 Q. And do you remember there being a couple
22 of bids to do those renovations at the Eagle Rock
23 house?

24 A. Yes.

25 Q. And do you remember to whom -- or excuse

Page 238

1 me, from whom the bids were given?

2 A. No, I do not.

3 Q. You don't remember the names of the
4 businesses that did that?

5 A. No.

6 Q. Okay. You don't remember what their bids
7 were?

8 A. I know they were more than what we had set
9 aside.

10 Q. All right. But there were two contractors
11 that were interested in doing the work on the house;
12 isn't that correct?

13 A. Yes.

14 Q. Would it be accurate to say that those
15 bids didn't come in until probably the fall of 2007?

16 A. I don't recall the date.

17 Q. But if you had chosen to move ahead with
18 the renovations pursuant to either one of the bids
19 or possibly even another, if you had gone further,
20 if you had chosen to have gone ahead with the
21 renovations, you could have been doing that, say, in
22 January of 2008?

23 A. At that point, there wasn't enough money.

24 Q. All right. So the bids came in higher
25 than what you were hoping for?

Page 239

1 A. Yes.

2 Q. Do you think that had anything to do with
3 Mr. Powers, or do you think that might have had
4 something to do with the nature of the business?

5 A. Well, there was a change in the economy,
6 and things were more expensive. So the original
7 quote that we got from Eric Spurlock was no longer
8 relevant.

9 Q. All right. So that change in the economy
10 that made things more expensive, did that have
11 anything to do with Mr. Powers?

12 A. No.

13 Q. Did he cause the change in the economy?

14 A. No.

15 Q. And when the change in the economy made
16 your plans to as to Eagle Rock impractical or less
17 practical, that change was also making things
18 more -- excuse me, less practical for Mr. Powers,
19 your partner, as well?

20 A. Yes.

21 Q. Now when you were speaking to the United
22 States Attorney, I think you said it was your plan
23 or your joint plan to rehabilitate the property and
24 resell it?

25 A. Yes.

Page 240

1 Q. When you started with that plan, okay,
2 when you got your head together with Mr. Powers to
3 discuss that plan, were you planning on failing?

4 A. No.

5 Q. Were you planning on succeeding?

6 A. Yes.

7 Q. Was Mr. Powers planning on succeeding?

8 A. Yes.

9 Q. Was he optimistic that this would succeed?

10 A. Yes.

11 Q. Did he move ahead with purposeful effort
12 to try to make your joint plan succeed?

13 A. Yes.

14 Q. Now before this change in the economy,
15 isn't it true that you had bought the several
16 different properties with Mr. Powers' assistance?

17 A. Yes.

18 Q. And about what year did you buy the first
19 property you bought with Mr. Powers' assistance?

20 A. 2006.

21 Q. And what property was that?

22 A. Amhurst.

23 Q. And that property was in the Nob Hill
24 area?

25 A. Yes.

Page 241

1 Q. And what was the second property you
2 bought?

3 A. That would have been Kielich.

4 Q. And that would be when, what year?

5 A. 2006.

6 Q. And then the third property you bought was
7 where? What was the address?

8 A. Palomas.

9 Q. And that was when?

10 A. 2006.

11 Q. And was there a fourth?

12 A. That was Eagle Rock.

13 Q. All right.

14 A. I had a current property.

15 Q. All right. Before you started buying
16 properties, the first property you owned was on
17 Pawnee?

18 A. Correct.

19 Q. Now when you Mr. Kraehe talked about your
20 reliance on Mr. Powers, I have a question for you.

21 When you bought Amhurst, the first
22 property you bought, were you relying on the
23 continued appreciation in the real estate market?

24 A. Yes.

25 Q. When you bought Kielich, were you also

Page 242

1 relying on the continued appreciation in the real
2 estate market?

3 A. Yes.

4 Q. When you bought Palomas, were you also
5 relying on, I guess I should say, the expectation of
6 continued appreciation in the real estate market?

7 A. Yes.

8 Q. And when you owned those three properties,
9 you were renting them out, weren't you?

10 A. I was living in one. And the one
11 property, my niece and her friends were living in.

12 Q. Okay, let me just take them one at a time.
13 You started this series with the first house on
14 Pawnee; is that right?

15 A. Well, that's my current property.

16 Q. Okay.

17 A. The first property with Kevin was on
18 Amhurst.

19 Q. All right. But did you own Pawnee before
20 you bought Amhurst?

21 A. Yes.

22 Q. And when you bought Amhurst, did you buy
23 that as an investment or as a primary residence?

24 A. On the loan,, it was as a primary
25 residence. But the intent was for investment.

Page 243

1 Q. All right. And you had tenants in the
2 Amhurst property; isn't that correct?

3 A. Yes.

4 Q. And did those tenants include college
5 students?

6 A. Yes.

7 Q. The Amhurst property is in the Nob Hill
8 area?

9 A. Yes.

10 Q. And was there market for student tenants
11 in that area for that house?

12 A. Yes.

13 Q. And was one of the tenants in fact one of
14 your relatives?

15 A. Yes.

16 Q. Which relative?

17 A. My niece.

18 Q. And were there any other relatives besides
19 that one niece?

20 A. No.

21 Q. Were any of the tenants in the Amhurst
22 property related to the medical profession or people
23 you knew from the medical profession?

24 A. No.

25 Q. Were there any other family members that

Page 244

1 resided in Amhurst?

2 A. No.

3 Q. Now after you bought Kielich, did you move
4 from Pawnee to Kielich?

5 A. Yes.

6 Q. And you made Kielich your primary
7 residence?

8 A. Yes.

9 Q. And you rented out Pawnee?

10 A. Correct.

11 Q. Did Mr. Powers tell you that if you were
12 to use Kielich as a primary residence, you would
13 have to reside in Kielich?

14 A. For 24 hours.

15 Q. And when Mr. Powers told you, when you
16 bought Amhurst as a primary residence, that you
17 would have to reside at Amhurst?

18 A. For 24 hours.

19 Q. And what happened when you bought Kielich
20 and moved into it, you rented Pawnee?

21 A. Yes.

22 Q. To whom?

23 A. To Kip Powers.

24 Q. And did you have a personal relationship
25 with Kip Powers?

Page 245

1 A. Yes.

2 Q. By personal, what do you mean?

3 A. We were friends.

4 Q. All right. Did you ever date?

5 A. We went out once.

6 Q. And then when you moved -- or excuse me.

7 When you bought the Palomas property, how did you
8 buy that?

9 A. As a primary residence.

10 Q. And who did you rent that out to, if you
11 did?

12 A. We were trying to flip the house and were
13 not able to. So my niece moved out of Amhurst and
14 moved into Palomas.

15 Q. Okay. When you say, "We were trying to
16 flip the house," who were you talking about?

17 A. My friend, Christy Rauth.

18 Q. Okay. Christy Rauth, that's R-A-U-T-H,
19 right?

20 A. Correct.

21 Q. Now your friend Christy Rauth, let me make
22 sure I understand. She moved into Palomas?

23 A. No. No one moved into Palomas.

24 Q. I'm sorry. Christy rehabbed Palomas?

25 A. Yes.

Page 246

1 Q. And was Palomas habitable when you first
2 bought it?

3 A. Yes.

4 Q. All right. Now what else did Christy
5 Rauth do in connection with the work you did?

6 A. She worked with the contractor to redo the
7 kitchen, and we painted and.

8 Q. All right. Who was the contractor?

9 A. Paul Barragan, from Your Son.

10 Q. Okay, so you're doing a lot of work here.
11 You're renting Pawnee, you've moved to Kielich,
12 you're renting Amhurst, you're fixing up Palomas.

13 At the time you were doing did all these
14 things were you still relying on the expectation
15 that the real estate market would continue on its
16 positive path?

17 A. Yes.

18 Q. Now, prior to the time you bought Eagle
19 Rock, weren't you already in the process of trying
20 to resell at least one of these properties?

21 A. No.

22 Q. All right. When did you list Amhurst for
23 sale?

24 A. Not until August. And there was an
25 agreement from Kevin that he already had a buyer.

Page 247

1 So it never went into listing, as far as I was
2 aware.

3 Q. Okay. So you started to list or tried to
4 start selling Amhurst in August of 2007?

5 A. Yes.

6 Q. And was that when the real estate market
7 was beginning to go downhill?

8 A. Yes.

9 Q. And when did you list Kielich, or did you?
10 A. I didn't.

11 Q. And when did you list Palomas?

12 A. Palomas was in February of that year,
13 2007.

14 Q. All right. So you listed Palomas, the one
15 that Christy Rauth and Mr. Barragan were renovating
16 or had renovated, you listed that in February of
17 2007, before you put an offer down for Amhurst; is
18 that right?

19 A. For --

20 Q. Excuse me. For Eagle Rock?

21 A. -- Eagle Rock, yes.

22 Q. And had you closed the sale on Palomas
23 yet?

24 A. No. There were no buyers.

25 Q. All right. Now on Pawnee, what was its

Page 248

1 status at about the time you made the offer on Eagle
2 Rock? Was that for sale?

3 A. No.

4 Q. Was it rented out?

5 A. Yes.

6 Q. Now, if one or two or three of these
7 properties that you owned had sold, did it ever
8 occur to you that you might take the profits and
9 perhaps do a better renovation or even build a new
10 house at Eagle Rock?

11 A. I could have.

12 Q. And so that thought did cross your mind,
13 didn't it?

14 A. No.

15 Q. It didn't?

16 A. I'm just answering.

17 Q. Okay. Would Eagle Rock have been, say,
18 the nicest address of all of the five properties
19 we're talking about?

20 A. Yes.

21 Q. And did you ever consider the possibility
22 that if you sold all four of your other properties,
23 you might be able to put quite a special house up on
24 Eagle Rock?

25 A. It never occurred to me. But I could

Page 249

1 have, yeah.

2 Q. Would it be accurate to say that the Eagle
3 Rock house, even though it was a bit run down, was
4 surrounded by some very expensive houses?

5 A. Yes, it was.

6 Q. And one of the principles that you and
7 Mr. Powers acted on from the start of your buying of
8 Amhurst, one of those principles was to look for a
9 house that was selling for much less per square
10 foot, dollars per square foot, than houses that were
11 surrounding it?

12 A. Yes.

13 Q. Are you familiar with that principle?

14 A. Yes.

15 Q. And until the real estate market tanked,
16 did you expect that that principle would be a
17 principle that worked for you?

18 A. Yes.

19 THE COURT: We're going to go ahead and
20 take a recess. Do not discuss the case among
21 yourselves or with others or in anyone's presence.

22 Court is in recess for ten minutes.

23 (Court in recess from 3:30 to 3:44.)

24 (Whereupon the jury entered the
25 courtroom.)

Page 250

1 THE COURT: Please be seated.

2 Q. (By Mr. Tallon) Ms. Tuschhoff, I just want
3 to back up to a few questions I asked you about
4 before the break and examine into those questions a
5 little bit further.

6 MR. TALLON: Could we cue the monitor up?

7 Could we take a look at Defendant's Exhibit R3?

8 And I believe it is stipulated to.

9 THE COURT: Is this stipulated?

10 MR. TALLON: I believe this is stipulated
11 to, yes.

12 Q. (By Mr. Tallon) Do you see that as a
13 letter from the United States Department of Justice,
14 Federal Bureau of Investigation, in Washington, DC?

15 A. Yes.

16 Q. Now, I realize this letter is not written
17 to you, but I have a couple of questions for you
18 about the letter. The date is April 8, 2010?

19 A. Yes.

20 Q. And it appears to be written to Mr. Kevin
21 Powers?

22 A. Yes.

23 Q. And could you read the first paragraph of
24 that letter?

25 A. "On February 11, 2010, property was seized

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1 by the Federal Bureau of Investigation at
2 Albuquerque, New Mexico."

3 Q. For forfeiture?

4 A. "For forfeiture of violation of proceeds
5 of a specified unlawful activity. The property was
6 appraised at 66,944.32."

7 Q. All right. Is that 66,000, almost
8 \$67,000, is that the money that was frozen by the
9 FBI in February of 2008?

10 A. Yes.

11 Q. So does that appear to be a typographical
12 error to you, February 11th, 2010?

13 A. Probably.

14 Q. Because your recollection is that that
15 money was seized from you in February of 2008; isn't
16 that right?

17 A. I wrote out a check to my attorney,
18 correct.

19 Q. And that was shortly after you met with
20 the FBI, without your attorney being present, in
21 January of 2008?

22 A. Correct.

23 Q. And you met with the FBI what, three or
24 four times before you met with your attorney?

25 A. Yes.

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1 Q. And this letter refers to your attorney
2 Robert Lohbeck, Esquire, in the second paragraph?

3 A. Yes.

4 Q. Okay. And that money that you signed a
5 note for that you borrowed has never been returned
6 to you; is that right?

7 A. Correct.

8 Q. Now, in connection with your income, isn't
9 it true that you were self-employed, doing some
10 activities like selling -- I don't know the best
11 word for it -- mementos that you made or objects or
12 art-type things that you made?

13 A. No.

14 Q. You didn't have any business selling like
15 cookies, varieties -- I really didn't know how to
16 describe it.

17 A. As a hobby, I did some catering. But I
18 rarely got paid for it.

19 Q. Okay, so you did some catering. And
20 wasn't there in connection with your application for
21 this mortgage on Eagle Rock, didn't you obtain a
22 letter from a CPA by the name of Steven Sanders?

23 A. There was a letter, but it was not sent to
24 me.

25 Q. Okay. But was the letter obtained for the

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1 purpose applying for this mortgage?

2 A. I didn't know that at the time. But I
3 have found that to be true, yes.

4 Q. Okay. Did Mr. Sanders describe your
5 occupation as not only being a nurse, but also being
6 a real estate investor and that the Dawn's Early
7 Light was a real estate business?

8 A. I don't recall that.

9 MR. TALLON: Could we look at Defense
10 Exhibit R5, which I believe has been stipulated to?

11 Q. (By Mr. Tallon) Okay. You're looking at
12 Exhibit R5, which has been stipulated to. The date
13 on that letter is April 2, 2007?

14 A. Yes.

15 Q. And it's written by letter C, initial
16 C. Steven Sanders, Certified Public Accountant?

17 A. Yes.

18 Q. And could you read that letter to the
19 jury?

20 A. "Regarding Dawn Tuschoff, I am in the
21 process of preparing the 2006 tax returns for
22 Ms. Tuschoff. I have reviewed the 2004 and 2005 tax
23 returns as part of that process. Ms. Tuschoff is
24 jointly employed by Lovelace Healthcare and as a
25 sole proprietor in her real estate company, Dawn's

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1 Early Light. If you require any further
2 information, please feel free to contact me as
3 listed below."

4 Q. And it's signed C. Steven Sanders?

5 A. Correct.

6 Q. And did you have your 2004, 2005 and 2006
7 tax returns prepared by Mr. Sanders?

8 A. No.

9 Q. You didn't?

10 A. My 2006 were. But the 2004 and 2005, he
11 just reviewed.

12 Q. Oh, I see. And that's what he says in the
13 letter, actually. So he had that information
14 available to him?

15 A. Yes.

16 Q. And would Mr. Sanders have also available
17 to him information related to the fact that at the
18 time he was preparing the 2006 tax return for you,
19 that you owned four properties? And that would be
20 Palomas, Kielich, Pawnee and Amhurst.

21 A. Yes.

22 Q. Mr. Sanders would have known that when he
23 wrote that letter on April 2, 2007?

24 A. Yes.

25 Q. And that was just prior to your

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1 application for the Eagle Rock loan?

2 A. Yes.

3 Q. And the Eagle Rock loan was a stated
4 income loan, yes?

5 A. Yes.

6 Q. And you had done stated income loans
7 before, hadn't you?

8 A. Yes.

9 Q. Were all the properties you bought, other
10 than Pawnee,, stated income loans?

11 A. Yes.

12 Q. Was Pawnee a stated income loan?

13 A. No.

14 Q. You had owned that for quite some time,
15 hadn't you?

16 A. Yes. I don't understand.

17 Q. Well, how long had you owned Pawnee?

18 A. Since 1994.

19 Q. And did they have stated income loans in
20 1994, to your knowledge?

21 A. Not that I'm aware of, no.

22 Q. Now, in connection with applying for
23 stated income loans --

24 MR. TALLON: Could we bring up Defense
25 Exhibit R9? And that has been stipulated to.

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1 Q. (By Mr. Tallon) In your discussions with
2 Mr. Powers in the course of your, I think, four
3 applications for stated income loans on four
4 properties, did he ever discuss with you a Web site
5 called salary.com?

6 A. No.

7 Q. Did you understand that a stated income
8 loan was basically to be an estimate of the income
9 that your profession would typically earn?

10 A. No.

11 Q. Did you know what the rules and
12 regulations were that would inform anybody of what
13 their stated income would be?

14 A. No.

15 Q. Could you take a look at this page for a
16 moment?

17 A. Yes.

18 Q. Now, if I could direct your attention to
19 the middle, sort of top of the page, where there's a
20 bar that says "Salary Wizard"?

21 A. Yes.

22 Q. Could you read the first line beneath
23 that?

24 A. "A median expected salary for a typical
25 head nurse in Albuquerque, New Mexico" --

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1 Q. 87122?

2 A. Yes. -- "is 105,000."

3 Q. \$56?

4 A. Yeah.

5 Q. And when you're talking about median, I
6 think that means that half the nurses in that
7 position might make less than that and half the
8 nurses in that position might make more than that?

9 A. Yes.

10 Q. Is that the way you understand it?

11 A. Yes.

12 Q. And going down from there, do you see sort
13 of a breakdown of elements of what this median
14 expected salary could be that is some people could
15 earn more some people could earn less but do you see
16 base salary bonuses disability healthcare pension,
17 time Ms. Tuschhoff maybe that is paid time
18 Ms. Tuschhoff I'm trying to think of the term that
19 they use what is the PTO?@@

20 A. PTO.

21 Q. So all of those things have a value when
22 you're an employee, right?

23 A. Yes.

24 Q. Now, do you know whether or not
25 Mr. Sanders or Mr. Powers was estimating your

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1 collected rents from your three properties when they
2 were estimating your income on your loan application
3 the Form 10-03.

4 Q. I do not?

5 A. And do you recall when you looked at the
6 Form 10-03 with Mr. Kraehe that the Form 10-03
7 didn't show rental income but do you know whether or
8 not that rental income might have been included in
9 the gross figure that your Mr. Kraehe was pointing
10 out to us.

11 A. I'm not sure, I don't recall.

12 Q. Okay. Now, when you were talking about
13 making two or \$3,000 a month as a nurse was that
14 you're take-home pay?

15 A. Yes.

16 Q. And that number didn't give any value the
17 3,002 to 3,000-dollar figure didn't give any dollar
18 value to Social Security 01K, 403(b) disability
19 healthcare pension, time Ms. Tuschoff it didn't
20 give any value to that did it?

21 A. No.

22 Q. That doesn't show up as part of your
23 take-home pay does it?

24 A. No, it does not.

25 Q. But in effect but in effect when you work

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1 for a company like Ardent health services or
2 Presbyterian health services if you're not just a
3 contract employee and you are an employee you
4 actually are getting some value in these different
5 categories aren't you?

6 A. Yes.

7 Q. And Sand all leery .com appears to
8 recognize that there's some value to those elements
9 of your compensation; is that right?

10 A. It appears so.

11 Q. All right. Okay if we could pull up for a
12 moment Exhibit R12 which is stipulated to, I believe
13 that's Exhibit R12.

14 And could I direct your attention to say
15 the upper third of the page where there's a box that
16 is entitled remarks?

17 THE COURT: Is this an MLS.

18 MR. TALLON: Yes it's called can you read
19 the title on the top.

20 THE WITNESS: Agency daily display.

21 MR. TALLON: It says agent full detail.

22 THE WITNESS: It just says detail display.

23 Q. (By Mr. Tallon) Could we look at
24 page 6SW1502.

25 It is actually a two page Exhibit okay.

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1 So that's page at the bottom does it say 6SW1501?

2 A. Two.

3 Q. All right. Could we back up to page 1 or
4 should I say 1501.

5 Q. Okay. Do you see that?

6 A. Yes.

7 Q. All right. And could we go to the top
8 just so we get the title of the first page?

9 A. Agent daily display.

10 Q. All right. And could we drop down to oh,
11 about the bottom third of the page there's a box
12 that says IN T Ms. Tuschhoff only remarks do you see
13 that?

14 A. Yes.

15 Q. And do you see the listing agent for the
16 property?

17 A. Allstate realty.

18 Q. All Star realty?

19 A. All Star.

20 Q. All right. Could we turn to page 1502 and
21 could I direct your attention to the box that is in
22 yellow it says remarks?

23 A. Okay.

24 Q. And I think you and I just touched briefly
25 on what I believe is a fact that is that the Eagle

Page 261

1 Rock property was a fairly unique property?

2 A. Yes.

3 Q. And is one of the things that made it

4 unique was that it was a doubled-walled adobe?

5 A. Yes.

6 Q. And they don't make too many of those, do
7 they?

8 A. No.

9 Q. And sometimes people will pay an awful lot
10 of money for an double-walled adobe?

11 A. Yes.

12 Q. Especially if it's in an area with
13 excellent schools which is the next thing written
14 there do you see that?

15 A. Yes.

16 Q. Especially if is right across the street
17 from Double Eagle elementary school it might be a
18 good school. Do you know that to be in the La Cueva
19 school district?

20 A. I don't know.

21 Q. All right. What else describes this house
22 could you continue at open floor plan?

23 A. Open floor plan mountain views kitchen
24 needs T LC great upside two fireplace separate guest
25 house can kitchen netback and deck for views wine

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1 cellar brick floors oversized two car garage with
2 workshop. Loads of potential, plans CLA make offer
3 can sell on REC with 10 percent down or lease
4 purchase CLE reduce 20K100 percent money back
5 guaranty.

6 Q. Okay. Does that sound like an attractive
7 description of the Eagle Rock property?

8 A. Yes.

9 Q. A property that was not only unique but
10 had potential?

11 A. Yes.

12 Q. But it also had some pretty substantial
13 problems that at one point in time put you on the
14 fence as to whether or not it should be razed
15 destroyed or rehabilitated; isn't that right?

16 A. Yes.

17 Q. And that created a little bit of
18 indecision about what to do with that property;
19 isn't that correct?

20 A. Yes.

21 Q. Is that a property that could have worked
22 out very well if the market hasn't gone out?

23 A. It may have.

24 Q. Now, could we take a look now at
25 defendant's Exhibit R14 and I believe that's wait,

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1 no that's not take it down, take it down.

2 Q. Okay.

3 MR. TALLON: The government stipulate to
4 R4.

5 THE COURT: Yes, I think I have in that
6 last stipulation.

7 MR. KRAEHE: We don't stipulate to it.

8 Q. (By Mr. Tallon) Very good we already
9 talked about Eric Spurlock do you remember the exact
10 amount of money you paid for those plans?

11 A. No, Kevin took care of that.

12 Q. And the amount of money that was paid for
13 those plans those would be reflected in your bank
14 records isn't that right?

15 A. Yes.

16 Q. And?

17 MR. KRAEHE: I may have no objection once
18 I see it.

19 We have no objection to R14, Your Honor.

20 THE COURT: R14 all right greed.

21 Q. (By Mr. Tallon) Okay if we could go back
22 to R14 it's okay to put it up.

23 Q. Do you see the name Eric Spurlock LLC on
24 the top of that Exhibit?

25 A. Yes.

1 Q. And if you could take a look at that
2 invoice and it appears to be a paid invoice if I
3 could direct your attention to the line that says
4 524-2007?

5 A. Yes.

6 Q. And it looks like the amount opposite
7 that's \$5,093.13?

8 A. Correct.

9 Q. Okay. I'm not sure I might have said 5400
10 earlier but I don't remember does that rewell does
11 that represent what was paid for Mr. Spurlock's
12 services and his blueprints?

13 A. According to the invoice I had never seen
14 it before.

15 Q. Okay. Do you trust the voice?

16 A. Yes.

17 Q. Okay. did you see blueprints?

18 A. Yes.

19 Q. In fact didn't you personally carry
20 blueprints to a contractor in an attempt to obtain a
21 bid from that contractor for rehabilitation
22 renovation services?

23 A. Yes.

24 Q. And isn't it true that after a period of
25 time, I don't remember the contractors name maybe

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1 you will but after a period of time this contractor
2 never made a bid on the plans?

3 A. Correct.

4 Q. And Mr. Powers went and retrieved the
5 blueprints from the contractor didn't he?

6 A. Yes.

7 Q. But if we could turn to the next page of
8 Exhibit R4 one of the contractors that did build on
9 the plans was a contractor named I can riel Leon
10 builders. Do you see that?

11 A. Yes.

12 Q. And it seems to give a pretty
13 comprehensive workup well it's about two pages, of
14 what they thought the cost of the work would be.
15 And if we could turn to the three page of that
16 Exhibit and drop down a little bit okay. I realize
17 there's a couple of numbers there's a typewritten
18 number and there's handwritten sort of bomb line but
19 it looks like the typewritten bottom line next to
20 construction total which is the total of the job tax
21 and management fee is \$193,169.34 is that what it
22 seed?

23 A. Yes.

24 Q. And then next to that \$193,000 there's
25 another figure as if someone reworked it and I don't

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1 know if, you know, who reworked it but that new
2 number is \$197,000.1976589 is that right?

3 A. Yes.

4 Q. Do you remember that to be one of the bids
5 that you received with respect to the renovation
6 work?

7 A. No.

8 Q. You don't remember that?

9 A. I have never seen this, no.

10 Q. Okay?

11 A. Kevin handled all of that.

12 Q. Okay. Do you have any doubt that
13 Mr. Powers was attempting to obtain some responsible
14 bids for?

15 A. No.

16 Q. The work on the house that related to the
17 blueprints that had been developed?

18 A. No.

19 Q. Okay. You don't believe that?

20 A. No, I know he was.

21 Q. Oh, he was okay?

22 A. I'm sorry I misunderstood the question.

23 Q. So there's no doubt in your mind that he
24 actually was going out there and trying to find a
25 solution to the renovation problem at Eagle Rock,

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1 yes?

2 A. Yes, he was.

3 Q. All right. And if we turn too, I think
4 the next page of that Exhibit. There is a you see a
5 letter from Eric Spurlock dated July three, 2007?

6 A. Yes.

7 Q. And it's written to Mr. Powers?

8 A. Yes.

9 Q. And it's concerning RE Coal lending
10 institution core riel Leon builders?

11 A. Yes.

12 Q. And could you read the first paragraph?

13 A. I would like to first apologize for
14 referring you to core Lillian builders as of
15 June 1st, 2007 Eric Spurlock LLC is no longer
16 affiliated with core Lillian builders as you may
17 know CJ rob Bennett of core Lillian builders has not
18 only be dishonest with me but he's also be dishonest
19 with you.

20 Q. All right. Second paragraph first
21 sentence could you read that?

22 A. Therefore any financial issue with them
23 must be handled with Sam act kin son who's part
24 owner of the company.

25 Q. Okay. I actually meant the very first

Page 268

1 sentence I think it says core Lillian build series a
2 separate company from Eric Spurlock LLC?

3 A. Correct.

4 Q. And then the last sentence of that
5 paragraph, Mr. Atkins is working very diligently to
6 make sure your project will be taken care of do you
7 see that?

8 A. Yes.

9 Q. And in the final paragraph I'll just read
10 the last sentence again I send my deepest apologies
11 and regrets for referring you to core Lillian
12 builders however I'll assist you in any way to make
13 sure you're home is completed as per your plans so
14 do you remember a problem with core riel Leon Leon
15 builders?

16 A. No.

17 Q. Did Mr. Powers not recommend poor kill
18 Leon builders to you as a contractor?

19 A. No.

20 Q. Well, maybe I'm being misleading again or
21 in precise. But you and Mr. Powers in your joint
22 venture decided not to use this company wild Leon
23 builders?

24 A. The few builders that he spoke with he
25 told me that the bid was too much and we could not

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1 proceed with them.

2 Q. Okay. Based on the letters you just read
3 do you think that was bad advice from Mr. Powers?

4 A. No.

5 Q. Okay could we look at defense Exhibit Q8
6 which I believe is stipulated to and could we turn
7 to that portion of Q8 which is entitled summary of
8 appraisal report beginning on page 500?

9 THE COURT: What would you call this
10 Exhibit .

11 MR. TALLON: The Exhibit is Q8, Your
12 Honor.

13 THE COURT: The identity of it.

14 MR. TALLON: It is actually has three
15 elements I'm directing the jury's attention to one
16 element it's called summary appraisal report
17 starting at page 611-801-500 to page 522 it's
18 actually 23 pages long.

19 THE COURT: Okay. I see it.

20 MR. TALLON: Do you see on page 500, can
21 you read page 500 on the bottom of that.

22 Q. (By Mr. Tallon) Do you see page 500 there?

23 A. Yes.

24 Q. And does this appear to be an appraisal
25 report it's titled summary appraisal report dated

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1 March 16, 2007?

2 A. Yes.

3 Q. And do you see what appears to be the name
4 of the appraiser Melissa Duran I think it's a
5 female?

6 A. Yes.

7 Q. Okay. Could we turn to the next page
8 page 501 if I could direct your attention to say the
9 middle of that page could you read the part the
10 sentence that begins with an inspection of the
11 property?

12 A. An inspection of the property and a study
13 of the pertinent factors including valuation trends
14 and analysis of neighborhood data led the appraiser
15 to the conclusion that the market value as of
16 March 16, 2007 is.

17 Q. And the number?

18 A. 760,000.

19 Q. And could we go two pages to page 5303 and
20 look down at the bottom of that page and if I could
21 direct your attention to two lines that begin with
22 the word indicated and I'll read them to you tell me
23 if I am correct indicated value by sales comparison
24 approach \$760,000?

25 A. Correct.

1 Q. And you know I've got a pretty bad copy it
2 almost seems that the next line says indicated value
3 by sales comparison approach is also hundred
4 \$60,000?

5 A. Yes.

6 Q. And then immediately to the right of that
7 do you see something that says cost approach if
8 developed \$706,200,800?

9 A. Yes.

10 Q. A little higher number did you understand
11 that to be the appraisal which was the basis for
12 your offer and for the money that you borrowed for
13 Eagle Rock?

14 A. I never saw appraisal.

15 Q. Do you know if the lender saw that
16 appraisal?

17 A. I would assume so I don't know.

18 Q. Do you know if the lender reviewed that
19 appraisal?

20 A. I don't know.

21 Q. It it it it it it it if.

22 Q. If we could turn for a moment to defense
23 Exhibit R21 and I believe it's stipulated to?

24 THE COURT: R21 is received.

25 Q. (By Mr. Tallon) And if we could turn to

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1 page 19 of 55 of that Exhibit. Do you have that in
2 front of you?

3 A. Yes.

4 Q. Is that page that has a top current income
5 of individual debtors?

6 A. Yes.

7 Q. And remember Mr. Kraehe asked you what
8 your income was in 2007, you said 2 to \$3,000 it
9 appears if you look at the very bottom of this page
10 that there's a date there that says November 3,
11 2008, so this was about, 18 month after you bought
12 Eagle Rock?

13 A. Uh-huh.

14 Q. Would November 3, 2008 seem to be about
15 the time that you filed your bankruptcy petition?

16 A. That was November first of 2008.

17 Q. Okay. All right. This document happens
18 to read November 3 I am just going by that document
19 stamp?

20 A. Yes.

21 Q. And on the line one on this page it says
22 current monthly gross wages, salaries and
23 commissions prorate if not paid monthly. And you
24 indicate a monthly income of \$6,779.90; is that
25 correct?

1 A. That's what's written here, yes.

2 Q. All right. Was that correct when you
3 signed this petition?

4 A. Yes.

5 Q. And that seems to be substantially higher
6 than the two to \$3,000 a month that you were talking
7 about with Mr. Kraehe doesn't it?

8 A. Yes.

9 Q. And you didn't receive a four to \$5,000 a
10 month raise between the spring of 2007 and the fall
11 62008 did you?

12 A. I switched jobs and I did have an increase
13 in income.

14 Q. Did you have an increase to almost \$7,000
15 as you indicated here?

16 A. I could have at that point.

17 Q. Well, would it be accurate to say that
18 this say \$6,800 a month in in do was pretty close to
19 what you were earning in the spring of 2007 when you
20 bought Eagle Rock?

21 A. I get confused with numbers I can't.

22 Q. That's all right, I'm not calling you a
23 liar or anything. I just wanted to ask you, does
24 that number there the 6,779, does that is that a
25 number that includes those kind of fringe benefits

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1 like 401(k)s 403(b)s over time, health insurance
2 that number doesn't include any of those?

3 A. I don't know.

4 Q. Well. It says current monthly gross wages
5 salary and commissions that's what that number is
6 right there, yes?

7 A. Yes.

8 Q. And that number that you see there on
9 page 19 of 35 if we could go to page 7 of 35 it it.
10 Is that page 7 of 35?

11 A. Yes.

12 Q. All right. That number about \$6,700 a
13 month in income from your employment that doesn't
14 include any rental income that you may have been
15 collecting from four of the five properties listed
16 on this page Pawnee, Kielich, Palomas and Amhurst;
17 is that right?

18 A. Yes.

19 Q. And you were getting some rental income
20 from those property?

21 A. They didn't pay the mortgages but there
22 was.

23 Q. Rental income?

24 A. Rental income.

25 Q. And if we could turn to page well it's

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1 actually yes, it's an Exhibit R21. It is I think
2 the last page in the Exhibit it's entitled page 1 of
3 1 document seven page of one it's also part of the
4 stipulated Exhibit.

5 Q. Okay. do you see that in front of you?

6 A. Yes.

7 Q. That's statement of intention?

8 A. Yes.

9 Q. And it appears that there's a column that
10 says property will be surrendered do you see that it
11 has got the checkmarks under it?

12 A. Yes.

13 Q. And every property is going to be
14 surrendered but all checked accept the property at
15 1020 Pawnee, Northeast; is that right?

16 A. Correct.

17 Q. You had Countrywide loan homes and you
18 retained that property?

19 A. Yes.

20 Q. Isn't it true that you had an election to
21 make as to the other loans you had here and you
22 elected not pay them?

23 A. I no longer had fund to pay them.

24 Q. Okay. Can you read Ms. Tuschhoff the
25 names of the lenders who had made you loans stated

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1 in come loans on the properties you bought starting
2 with Bank of America?

3 A. Bank of America, City mortgage, E trade
4 green point, Indy Mac, National City residential
5 funding company, Suntrust Mortgage and Suntrust
6 Mortgage.

7 Q. Did you understand those companies to be
8 what they call subprime lenders?

9 A. For.

10 Q. You're not familiar with that?

11 A. No.

12 Q. Did you think the interest rates they
13 charged were a little bit hi?

14 A. I didn't know any different.

15 Q. Do you remember getting a bid from
16 roadrunner construction for the renovation of Eagle
17 Rock?

18 A. No.

19 Q. Did you consult with your friend Christy
20 Rauth at all in connection with the renovation of
21 Eagle Rock that's the lady who renovated the other
22 property?

23 A. No.

24 Q. I know Mr. Kraehe asked you, you know, if
25 you were single and how old you were do you have any

Page 277

1 family in town?

2 A. Yes.

3 Q. Is your dad in town?

4 A. Yes.

5 Q. Most of your family lives in Albuquerque
6 don't they?

7 A. Yes.

8 Q. You have a brother who lives in
9 Albuquerque don't you?

10 A. Yes.

11 Q. And didn't he do business with Mr. Powers?

12 A. Yes.

13 Q. And did you know Mr. Powers to be a
14 married man at the time you did business with him?

15 A. Yes.

16 Q. Was he always a gentleman with you?

17 A. Yes.

18 Q. Did he have a daughter?

19 A. Yes.

20 MR. TALLON: I have nothing further.

21 THE COURT: Redirect.

22 REDIRECT EXAMINATION

23 BY MR. KRAEHE:

24 Q. Ms. Tuschoff, did Mr. Powers lead to you
25 believe that you and him would be in a partnership

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1 together?

2 A. Yes.

3 Q. And did he lead you to believe that that
4 would be an equal partnership?

5 A. Yes.

6 Q. Is that one of the reasons you trusted
7 him?

8 A. Well I agreed to do it because I trusted
9 him.

10 Q. Okay. And did you sign any partnership
11 agreement with him?

12 A. No.

13 Q. So this partnership you had with him was
14 just based on what he told you?

15 A. Yes.

16 Q. And what he made you believe?

17 A. Yes.

18 MR. TALLON: Objection to the form of the
19 question.

20 THE COURT: Sustained as to the last part.

21 Q. (By Mr. Kraehe) Now this partnership you
22 had with Mr. Powers was it centered around real
23 estate investments?

24 A. Yes.

25 Q. And with him you purchased I believe how

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1 many houses was it three or four?

2 A. Four.

3 Q. Do you have any of those four houses any
4 more?

5 A. No.

6 Q. When you lost those houses did it cause to
7 you go into bankruptcy?

8 A. Yes.

9 Q. Did Mr. Powers borrow any of the money to
10 buy those houses?

11 A. Of the houses that I purchased, no.

12 Q. That were part of your partnership with
13 Mr. Powers?

14 A. No, he did not purchase any of them.

15 Q. He didn't borrow any money to purchase any
16 of those properties?

17 MR. TALLON: Objection, Your Honor, to the
18 mischaracterization of the partnership.

19 THE COURT: Yes, I think so I don't
20 understand the testimony so far to be that
21 Mr. Powers was in partnership when she bought the
22 other houses I thought she about the those
23 independently from him that he was just a real
24 estate agent.

25 MR. TALLON: That's correct, Your Honor,

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1 and I move to strike the question and the answers to
2 the extent that it's misleading.

3 THE COURT: Okay sustained.

4 Q. (By Mr. Kraehe) Let me just focus on the
5 house at Eagle Rock did you have a partnership with
6 Mr. Powers involving the property at Eagle Rock?

7 A. Yes.

8 Q. And did Mr. Powers lead to you believe
9 that was an equal partnership?

10 A. Yes.

11 Q. Did Mr. Powers borrow any money to
12 purchase that property?

13 A. No.

14 Q. Who borrowed the money?

15 A. I it.

16 Q. You borrowed all of it?

17 A. Yes.

18 Q. \$760,000?

19 A. Yes.

20 Q. And earlier we showed you those notes that
21 you signed?

22 A. Yes.

23 Q. Did Mr. Powers sign those notes?

24 A. No.

25 Q. Who was on the hook if the market went

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1 down and you weren't able to pay the mortgage on
2 that or sell that property?

3 A. Me.

4 Q. Was Mr. Powers in the least bit liable for
5 any losses that were incurred by this partnership
6 you had with him?

7 A. No.

8 Q. And I believe correct me if I'm wrong but
9 the partnership also involved \$100,000 in a joint
10 bank account with Mr. Powers?

11 A. Yes.

12 Q. All right. Did Mr. Powers sign any
13 documents that restricted his access to that bank
14 account?

15 A. No.

16 Q. Or that required your approval before
17 taking any money out of that bank account?

18 A. We had a verbal agreement that we should
19 have double signatures.

20 Q. Okay. And did Mr. Powers use that bank
21 account as though it were his own?

22 A. No.

23 Q. Okay. Did he take money out of that bank
24 account?

25 A. He did borrow some money from the account.

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1 Q. It was around \$67,000.60000?

2 A. Something like that.

3 Q. Did he use that money for purposes of the
4 partnership you had with him?

5 A. No.

6 Q. Did Mr. Powers get a real estate
7 commission when he purchased the house on your
8 behalf?

9 A. Yes.

10 Q. And that is the one on Eagle Rock?

11 A. Correct.

12 Q. And did he get a mortgage commission or
13 some kind of fees in connection with his role as
14 mortgage broker in connection with the purchase of
15 the property on Eagle Rock?

16 A. Yes.

17 Q. As part of your partnership was it your
18 belief that if you sold the property after it being
19 renovated who would be the real estate broker on
20 that?

21 A. Mr. Powers.

22 Q. And would he get a commission for that?

23 A. Yes.

24 Q. And who would be the mortgage broker on
25 that.

1 Q. Would that be Mr. Powers as well?

2 A. Could be, yes.

3 MR. TALLON: Objection speculative.

4 THE COURT: If you know, don't guess.

5 Q. (By Mr. Kraehe) What. Was that your
6 understanding?

7 A. Yes.

8 Q. And did Mr. Powers get to use your house
9 that you bought on Eagle Rock as partnership of this
10 partnership?

11 A. No.

12 Q. Okay. Would you call this an equal
13 partnership with Mr. Powers?

14 MR. TALLON: Objection asked and answered.

15 THE COURT: Overruled.

16 Q. (By Mr. Kraehe) You may answer was that an
17 equal partnership?

18 A. I thought so at the time.

19 Q. Okay. Now in retrospect was it an equal
20 partnership?

21 MR. TALLON: Objection in retrospect.

22 THE COURT: Overruled.

23 THE WITNESS: No.

24 Q. (By Mr. Kraehe) Was that fair partnership?

25 A. No.

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1 Q. Was Dawn's Early Light a business?

2 A. No, it was my e-mail address.

3 Q. Was it anything every that was anything
4 more than just an e-mail address?

5 A. No. Not as far as I was aware.

6 Q. Did you ever see it referenced on a tax
7 return?

8 A. No.

9 Q. Did you ever include it on a tax return?

10 A. No.

11 Q. Did you do any business with the firm of
12 Sanders and Sanders that's the accountancy firm
13 before 2006?

14 A. No.

15 Q. How did you learn about Sanders and
16 Sanders?

17 A. Through Mr. Powers.

18 Q. Was Sanders and Sanders Mr. Powers
19 accountant?

20 A. Yes.

21 Q. That letter that was brought up before
22 from Sanders and Sanders, I believe that was defense
23 Exhibit R5 do you recall that Exhibit?

24 A. Yes.

25 Q. Had you seen that before?

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1 A. Not until Mary Higgins showed it to me.

2 Q. Okay. Did Mr. Powers every show that
3 letter to you?

4 A. No.

5 Q. Do you know where that letter came from?

6 A. I assume from Mr. Sanders.

7 Q. Do you know how it was generated why it
8 was generated?

9 A. No.

10 Q. Or who caused it to be generated?

11 A. No.

12 Q. All right the facts stated on that letter
13 correct?

14 A. No.

15 Q. I'm pulling up the 1003 on your first loan
16 application in connection with Eagle Rock?

17 A. Okay.

18 Q. And that references Dawn's Early Light
19 again what is the monthly income that's stated for
20 Dawn's Early Light?

21 A. \$5,000.

22 Q. \$5,000. Did you make \$5,000 from your
23 e-mail address at any time in your life?

24 A. No.

25 Q. Is that just a complete fabrication?

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1 A. Yes.

2 Q. And did you see that when you signed that
3 1003?

4 A. No.

5 Q. And who again presented that 1003 to you
6 for signature?

7 A. It would probably have been Mr. Powers.

8 Q. Let me ask you about your rental
9 properties?

10 A. Yes.

11 Q. You had how many rental properties was it
12 three?

13 A. Three.

14 Q. Did you have a mortgage on those rental
15 properties?

16 A. Yes.

17 Q. And you purchased those rental properties
18 on stated in come loans?

19 A. Yes.

20 Q. Were those 100 percent loan to value
21 rental loans?

22 A. Yes.

23 Q. Did you have much equity at all in those
24 rental properties at the time that you applied for
25 your loan on Eagle Rock?

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1 A. I don't know whatever money we had pulled
2 out.

3 Q. Okay. And how much were you making a
4 month net on those rental properties after you paid
5 the mortgages and any expenses on them?

6 A. I was not making any money.

7 Q. You were losing money?

8 A. Yes.

9 Q. So were you making any income at all on
10 those rental properties?

11 A. No.

12 Q. Mr. Tallon showed you a something from a
13 salary.com Web page?

14 A. Yes.

15 Q. And I think that referenced salary ranges
16 for a head nurse is that correct?

17 A. Yes.

18 Q. Are you a head nurse?

19 A. No.

20 Q. Were you a head nurse in 2006?

21 A. No.

22 Q. Have you ever made I think the low end of
23 that salary range was around 80 some how to dollars
24 have you ever made \$80,000 a year?

25 A. I do now.

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1 Q. You do now did you in 2006?

2 A. No.

3 Q. And I think the high range on that was
4 over 100,000 is that correct?

5 A. Yes.

6 Q. Have you ever made \$100,000?

7 A. No.

8 Q. And again what was your salary in 2006 at
9 the time that you signed the loan application?

10 A. Around 60,000.

11 Q. And that is \$5,000 a month?

12 A. I don't really recall how much I took home
13 but.

14 Q. But?

15 A. I am bad with numbers.

16 Q. All right. Do you recall what you were
17 taking home back then?

18 A. Probably about maybe 1400 every two weeks
19 I'm trying to remember based on what I'm taking home
20 now.

21 Q. Did you go into bankruptcy because you
22 wanted to?

23 A. No.

24 Q. Was that just a decision you made one day
25 without because you wanted to just for the heck of

Page 289

1 it?

2 A. No.

3 Q. Were you compelled to go into bankruptcy?

4 A. Yes, I was advised.

5 Q. Okay. And why did you go into bankruptcy?

6 A. Because I could no longer afford the
7 mortgages.

8 Q. And those were mortgages that you took out
9 on who's advice?

10 A. Mr. Powers.

11 MR. KRAEHE: Nothing further, Your Honor.

12 MR. TALLON: Your Honor, May I approach?

13 (At the bench:)

14 MR. TALLON: Your Honor, on redirect
15 Ms. Tuschkhoff was asked who processed her 1003ings
16 referenced her 1003 and the come she said probably
17 Mr. Powers and the 1003 that she was returning to
18 and that her attention was being deflected to
19 reflects that she signed this 1003 in front after
20 Michael Delgado whose signature appears on to and
21 Michael Delgado a government witness who might have
22 testified today but he's going to testify on Monday
23 I would like an opportunity to I just want to be
24 able to clear that up because it's.

25 THE COURT: I'll tell the jury to

Page 290

1 disregard.

2 MR. KRAEHE: Although, Your Honor, I asked
3 who presented it to her not who filled it out.

4 MR. TALLON: Just one question, Your
5 Honor.

6 THE COURT: All right one question.

7 MS. HIGGINS: Your Honor, just for
8 scheduling purpose we do not have Mr. Delgado he's
9 in the National Guard so we had Mr. Sena who has
10 been waiting he's going to be a lengthy witness and
11 even if we were to start Mr. Sena today the
12 recording we hope to get in through him last for an
13 hour and 15 minutes.

14 THE COURT: How many more witnesses do you
15 have.

16 MS. HIGGINS: We don't.

17 THE COURT: No, I mean total.

18 MS. HIGGINS: I think Mr. Sena and
19 possibly Mr. Delgado and also possible we may call
20 an agent but we are still thinking about that.

21 THE COURT: Okay. Well, I'll let the jury
22 you ask your one question and then maybe one
23 redirect and then we'll talk about scheduling.

24 (In open court:)

25

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1 RECROSS-EXAMINATION

2 BY MR. TALLON:

3 Q. I don't recall what Mr. Case says exact
4 words were I remember what your answer was I'd like
5 to return your attention to Government Exhibit 62
6 and it starts on page S T R294 do you have that up
7 there.

8 Q. Okay. Do you recognize that as the 1003
9 that Mr. Kraehe was discussing with you on redirect
10 examination that's the loan application?

11 A. Yes.

12 Q. Do you recall that?

13 A. Uh-huh.

14 Q. Do you recall your saying that probably
15 Mr. Powers either presented that to you or made that
16 application for you?

17 A. Yes.

18 Q. Do you remember that answer. Would you
19 turn now to page 299 which is page 4 of 5 of that
20 same Exhibit if we direct your attention to the
21 bottom of the page and do you see a signature there
22 and a name?

23 A. Michael Delgado.

24 Q. And would that be the person who witnessed
25 your signing this application?

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1 A. Possibly.

2 Q. So you don't have an independent
3 recollection of who was present when you signed your
4 application for this loan do you?

5 A. No, it was either Michael or Kevin.

6 Q. Well, you're familiar with Mr. Powers'
7 signature from your partnership on eagle the Eagle
8 Rock property that Mr. Powers' signature and is that
9 Mr. Powers' name on that application?

10 A. No.

11 MR. TALLON: I have nothing further.

12 THE COURT: Any redirect?

13 MR. KRAEHE: Nothing further, Your Honor.

14 THE COURT: You're excused. Thank you
15 very much for your service here.

16 We're going to be talking about some
17 scheduling. Actually, what I'd like to do is just
18 dismiss you back to the jury room. I'd like to give
19 you some indication of scheduling, as far as next
20 week is concerned, before you leave today, and I
21 can't Ms. Tuschoff the top of my head at this time.

22 I want to talk to counsel briefly. And
23 then I'll either send Juan back to talk to you or
24 bring you back, I'm not sure which. But it won't be
25 very long, maybe five, ten minutes max. Thank you.

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1 Court is in recess. Don't discuss the
2 case among yourselves or with others.

3 (Whereupon the jury left the courtroom.)

4 (Court in recess at 4:42 p.m.)

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4 I, Paul Baca, Official Court Reporter for
5 the US District Court, District of New Mexico, do
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